

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE LOPEZ TORRES, ALVIN GAITAN
BENITEZ, CHRISTIAN LEMUS CERNA,
OMAR DEJESUS CASTILLO, DOUGLAS
DURAN CERRITOS, MANUEL ERNESTO
PAIZ GUEVARA, and JESUS ALEJANDRO
CHAVEZ,

Defendants.

Crim. No. 1:14cr306

March 30, 2016

JURY TRIAL

** PRELIMINARY JURY INSTRUCTIONS, OPENING STATEMENTS **

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
BY: JULIA MARTINEZ, AUSA
STEPHEN M. CAMPBELL, AUSA
TOBIAS TOBLER, AUSA

OFFICIAL COURT REPORTER:

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U.S. District Court
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(Court recessed)

PROCEEDINGS

(Thereupon, the following was heard in open court at 11:07 a.m.)

(Jury not present.)

THE COURT: Good morning.

THE CLERK: 1:14 criminal 306, United States versus Jose Lopez Torres, Alvin Gaitan Benitez, Christian Lemus Cerna, Omar DeJesus Castillo, Douglas Duran Cerritos, Manuel Ernesto Paiz Guevara, and Jesus Alejandro Chavez.

THE COURT: Good morning, Counsel.

Good morning, Mr. Lopez Torres, Mr. Gaitan Benitez, Mr. Lemus Cerna, Mr. DeJesus Castillo, Mr. Duran Cerritos, Mr. Paiz Guevara and Mr. Chavez.

Good morning, Counsel.

I provided you, not with jury instructions, but I have to tell the jury what the case is about. And what I tried to do is find some, just basic instructions which I will use during my introduction.

Am I ready to bring the jury out? Is there anything I need to know before I bring the jury out?

(No response.)

THE COURT: No? Okay.

You can bring the jury out.

1 Thank you, Mr. Toliver.

2 Please rise for the jury.

3 (Jury present at 11:08 a.m.)

4 THE COURT: You may be seated.

5 Good morning, ladies and gentlemen.

6 THE JURORS: Good morning.

7 THE COURT: Good morning, Mr. Lopez Torres.

8 Good morning, Mr. Gaitan Benitez.

9 Good morning, Mr. Lemus Cerna.

10 Good morning, Mr. DeJesus Castillo.

11 Good morning, Mr. Duran Cerritos.

12 Good morning, Mr. Paiz Guevara.

13 And good morning, Mr. Alejandro Chavez.

14 Good morning, Counsel.

15 PRELIMINARY JURY INSTRUCTIONS BY THE COURT

16 THE COURT: Ladies and gentlemen, let me
17 begin by giving you some preliminary instruction.

18 I have notepads and pens for you. Let me
19 pass those out right now, please.

20 Does everybody have a pad and pen that wants
21 one?

22 (Jurors indicating.)

23 THE COURT: All right, ladies and gentlemen,
24 you are not required to take notes. I'm providing you
25 with pads and pens, so if you would like to take notes

1 to help you recall the testimony throughout our lengthy
2 trial, you're permitted to do so.

3 The fact that a juror has something in his
4 or her notes does not mean they're entitled to greater
5 consideration than someone who has not taken notes.
6 Many people are perfectly capable of recalling testimony
7 without taking notes.

8 And please do not become so consumed in your
9 notetaking that you're not paying attention to the
10 person on the stand. A lot of information is conveyed
11 by the way a person presents themselves.

12 Now, I know that there is an issue of sight
13 line, to be able to see all the individuals on trial.
14 And what I'll have done as I begin the case this morning
15 is have each individual stand, so you will know where
16 they're sitting. And if you want to make notes about
17 where they are sitting, you can do that.

18 Ladies and gentlemen, this is the case of
19 United States of America versus Mr. Jose Lopez Torres,
20 Alvin Gaitan Benitez, Christian Lemus Cerna, Omar
21 DeJesus Castillo, Douglas Duran Cerritos, Manuel Ernesto
22 Paiz Guevara, and Jesus Alejandro Chavez.

23 Let me have counsel and individuals please
24 stand.

25 Mr. Jose Lopez Torres and counsel.

1 Good morning. You may be seated.

2 Counsel for Mr. Alvin Gaitan Benitez,
3 Mr. Benitez.

4 Counsel for Mr. Christian Lemus Cerna,
5 Mr. Cerna.

6 Mr. Omar DeJesus Castillo and his counsel.

7 MS. MARTEL: Good morning.

8 THE COURT: Mr. Douglas Duran Cerritos and
9 his counsel.

10 MR. CONTE: Good morning.

11 MR. CRAWLEY: Good morning.

12 THE COURT: Mr. Manuel Ernesto Paiz and his
13 counsel.

14 And Mr. Jesus Alejandro Chavez and his
15 counsel.

16 MS. AMATO: Good morning.

17 THE COURT: Thank you.

18 Ladies and gentlemen, this is a criminal
19 case, and I want to instruct you that you must presume
20 each defendant to be innocent of the crimes charged.
21 Thus each defendant, although accused of crimes in the
22 indictment, begins the trial with a clean slate, with no
23 evidence against him.

24 The indictment, as you already know, is not
25 evidence of any kind.

1 The defendants are, of course, not on trial
2 for any act or crime not contained in the indictment.

3 The law permits nothing but legal evidence,
4 presented before the jury in court, to be considered by
5 you in support of any charge against any defendant.

6 The presumption of innocence alone,
7 therefore, is sufficient to acquit the defendants.

8 The burden is always upon the government to
9 prove guilt beyond a reasonable doubt. This burden
10 never shifts to a defendant, for the law never imposes
11 upon a defendant in a criminal case the burden or duty
12 of calling any witnesses or producing any evidence.

13 The defendant is not even obligated to
14 produce any evidence by cross-examining the witnesses
15 for the government. And, of course, the defendant is
16 not required to testify. You may not consider that.

17 It is not required that the government prove
18 guilt beyond all possible doubt. The test is one of
19 reasonable doubt. A reasonable doubt is a doubt based
20 upon reason and common sense, the kind of doubt that
21 would make a reasonable person hesitate to act.

22 Proof beyond a reasonable doubt must,
23 therefore, be of such convincing character that a
24 reasonable person would not hesitate to rely upon it and
25 act upon it in the most important of his or her own

1 affairs.

2 Unless the government proves beyond a
3 reasonable doubt that a defendant has committed each and
4 every element of the offense charged in the indictment,
5 you must find the defendant not guilty of the offense.

6 If the jury views the evidence in the case
7 as reasonably permitting either two -- either of two
8 conclusions, one of innocence and the other of guilt,
9 the jury must, of course, adopt the conclusion of
10 innocence.

11 You are here to determine whether the
12 government can prove the guilt of the defendants for the
13 charges in the indictment beyond a reasonable doubt.
14 You are not called upon to return a verdict as to guilt
15 or innocence of any other persons.

16 So, if the evidence in the case convinces
17 you beyond a reasonable doubt of the guilt of each
18 defendant for the crimes charged against that defendant
19 in the indictment, you should so find, even though you
20 may believe one or more other unindicted persons are
21 also guilty.

22 But if any reasonable doubt remains in your
23 minds after impartial consideration of all the evidence
24 in the case, it is your duty to find each defendant not
25 guilty of the charge.

1 A separate crime is alleged against one or
2 more of the defendants in each count of the indictment.
3 Each alleged offense and any evidence pertaining to it
4 should be considered separately by the jury.

5 The fact that you find one defendant guilty
6 or not guilty of one of the offenses charged should not
7 control your verdict as to any other offense charged
8 against that defendant. You must give separate and
9 impartial consideration -- individual consideration for
10 each charge against each defendant.

11 The indictment itself is not evidence. The
12 indictment is only a formal method used by the
13 government to accuse a defendant of a crime. It is not
14 evidence of any kind against the defendant. The
15 defendant is presumed to be innocent of the crimes
16 charged.

17 Even though the indictment has been returned
18 against him, the defendant begins the trial with
19 absolutely no evidence against him. Each defendant has
20 pled not guilty to this indictment and therefore denies
21 he is guilty of the charges.

22 In this case, there are nine counts to the
23 indictment. And, let me just read off to you that
24 Mr. Jose Lopez Torres is facing charges in Count 1,
25 Count 2, Count 3, and Count 4. Jose Lopez Torres is

1 facing Counts 1, 2, 3 and 4.

2 Mr. Omar DeJesus Castillo is facing charges
3 in Counts 4 and 6; 4 and 6 for Castillo.

4 For Mr. Gaitan Benitez, Counts 5 and 6.

5 For Mr. Douglas Duran Cerritos, it's
6 Count 6.

7 For Mr. Christian Lemus Cerna, Count 6.

8 For Mr. Manuel Ernesto Paiz Guevara,
9 Count 6.

10 And for Mr. Jesus Alejandro Chavez,
11 Counts 7, 8 and 9.

12 Ladies and gentlemen, the defendant,
13 Mr. Jose Lopez Torres, along with Mr. Alvin Gaitan
14 Benitez, Douglas Duran Cerritos, Christian Lemus Cerna,
15 Manuel Ernesto Paiz Guevara, and Jesus Alejandro Chavez,
16 are alleged to be members and associates of a criminal
17 organization known as La Mara Salvatrucha, or MS-13.

18 The government alleges that MS-13 is a
19 violent international street gang involved in a variety
20 of criminal activities, including murder, obstruction of
21 justice, drug trafficking and sex trafficking in the
22 Eastern District of Virginia and elsewhere.

23 The government alleges that MS-13 has
24 operated in the Eastern District of Virginia since 1993,
25 at least 1993, and that members are located throughout

1 the United States, including Virginia, Maryland,
2 New York and California. And it also alleges that the
3 government -- that MS-13 has a large international
4 presence in El Salvador, Guatemala, Honduras and Mexico.

5 The government alleges that from on or about
6 September 29, 2013, through October 1, 2013, in
7 Woodbridge, in the Eastern District of Virginia, and
8 elsewhere, for the purpose of gaining entrance to,
9 maintaining and increasing position in MS-13, an
10 enterprise engaged in racketeering activity, that Jose
11 Lopez Torres, together with others known and unknown to
12 the grand jury, knowingly and intentionally combined,
13 conspired -- meaning entered into a partnership in crime
14 with others -- confederated and agreed together with
15 each other and others to murder DF, in violation of the
16 laws of the Commonwealth of Virginia.

17 The first element of the charges in
18 Counts 1, 2, 4 and 6 and 7, requires the government to
19 prove beyond a reasonable doubt the existence of an
20 enterprise.

21 As used in these instructions, the term
22 "enterprise" includes any individual, partnership,
23 corporation, association, or other legal entity, and any
24 union or groups of individuals associated in fact,
25 although not a legal entity.

1 The term "enterprise" as used in these
2 instructions may include a group of people associated in
3 fact, even though this association is not recognized as
4 a legal entity.

5 A group or association of people can be an
6 enterprise if these individuals have joined together for
7 the purpose of engaging in a common course of conduct.
8 Such an association of persons may be established by
9 evidence showing an ongoing organization, formal or
10 informal, and by evidence that the people making up the
11 association function as a continuing unit.

12 Such an association of individuals may
13 retain a status as an enterprise, even though membership
14 with the association may change by adding or losing
15 individuals during the course of its existence.

16 The first element of the charge in Counts 1,
17 2, 4, and 6, 7, further requires that the government
18 prove beyond a reasonable doubt that the alleged
19 enterprise engaged in or affected international or
20 foreign commerce.

21 "Interstate commerce" means trade or
22 business or travel between the states.

23 The phrase "engaged in or activities of
24 which affect interstate commerce" as used in these
25 instructions means to be involved in or to affect in

1 some way trade or business or travel between the states.

2 To establish the requisite effect of
3 interstate or foreign commerce, the government is not
4 required to prove a significant or substantial effect on
5 foreign commerce; rather a minimal effect on interstate
6 or foreign commerce is sufficient.

7 An enterprise's effect on interstate or
8 foreign commerce may be established through the effects
9 caused by individual racketeering acts. However, it is
10 not necessary for the government to prove that the
11 individual racketeering acts themselves affected
12 interstate or foreign commerce. Rather, it is the
13 enterprise and its activities, considered in their
14 entirety, that must be shown to have that effect.

15 Moreover, it is not necessary for the
16 government to prove that the defendant knew that the
17 enterprise would affect interstate commerce or foreign
18 commerce, that the defendant intended to affect
19 interstate or foreign commerce, or that the defendant
20 engaged in, or his activities affected, interstate or
21 foreign commerce.

22 To satisfy this element, the government need
23 only prove beyond a reasonable doubt either that the
24 activities of the enterprise, considered in their
25 entirety, had some minimal effect on interstate or

1 foreign commerce, or that the enterprise engaged in
2 interstate or foreign commerce.

3 The term "conspiracy." A criminal
4 conspiracy is an agreement or mutual understanding,
5 knowingly made or knowingly entered into, by at least
6 two or more people to violate the law by some joint or
7 common plan or course of action.

8 A conspiracy is, in a very true sense, a
9 partnership in crime. A conspiracy or an agreement to
10 violate the law, like any other kind of agreement or
11 understanding, need not be formal, written, or even
12 expressed directly in every detail.

13 The government must prove that the defendant
14 and at least one other person knowingly and deliberately
15 arrived at an agreement or understanding that they, and
16 perhaps others, would violate some law or laws by means
17 of some common plan or course of action as alleged in
18 Count 1 of the indictment.

19 It is proof of this conscious understanding
20 and deliberate agreement by the alleged members that
21 should be central to your consideration of the charge of
22 conspiracy.

23 To prove the existence of a conspiracy or an
24 illegal agreement, the government is not required to
25 produce a written contract between the parties, or even

1 to produce evidence of an express oral agreement
2 spelling out all the details of the understanding.

3 To prove that a conspiracy existed,
4 moreover, the government is not required to show that
5 all of the people named in the indictment as members of
6 the conspiracy were in fact parties to the agreement, or
7 that all the members of the alleged conspiracy were
8 named or charged, or that all the people whom the
9 evidence shows were actually members of the conspiracy
10 agreed to all the means or methods set out in the
11 indictment.

12 Unless the government proves beyond a
13 reasonable doubt that a conspiracy as just explained
14 actually existed, then you must acquit the defendants of
15 the charge in Count 1.

16 Before a jury may find a defendant or any
17 other person became a member of the conspiracy charged
18 in Count 1, the evidence in the case must show beyond a
19 reasonable doubt that the defendant knew the purpose or
20 goal of the agreement or understanding, and then
21 deliberately entered into an agreement, intending in
22 some way to accomplish the goal or purpose of this
23 common plan or joint action.

24 If the evidence establishes beyond a
25 reasonable doubt that the defendant knowingly and

1 deliberately entered into an agreement to murder DF, as
2 charged in Count 1, the fact that the defendant did not
3 join the agreement at its beginning, or did not know all
4 the details of the agreement, or did not participate in
5 each act of the agreement, or did not play a major role
6 in accomplishing the unlawful goal, is not important to
7 your decision regarding membership in the conspiracy.

8 Merely associating with others and
9 discussing common goals, mere similarity of conduct
10 between or among such persons, merely being present at
11 the place where a crime takes place or is discussed, or
12 even knowing about a criminal conduct, does not, of
13 itself, make someone a member of a conspiracy or a
14 conspirator.

15 Count 2 of the third superseding indictment
16 alleges that on or about October 1, 2013, in Woodbridge,
17 Virginia, within the Eastern District of Virginia, and
18 elsewhere, for the purpose of gaining entrance to, and
19 maintaining an increasing position in MS-13, an alleged
20 enterprise engaged in racketeering activity, it's
21 alleged that Defendant Jose Lopez Torres, together with
22 others known and unknown to the grand jury, knowingly
23 and intentionally attempted to murder DF, in violation
24 of the laws of the Commonwealth of Virginia, and did
25 aid, abet, counsel, command, induce and cause another

1 person to commit said offense.

2 Count 2 charges the Defendant Jose Lopez
3 Torres with a violent crime, that is, attempted murder
4 in aid of racketeering. To sustain its burden of proof
5 against the defendant, the government must prove the
6 following three essential elements beyond a reasonable
7 doubt:

8 One, that on or about the date charged in
9 Count 2 of the indictment, an enterprise engaged in or
10 the activities which affect interstate or foreign
11 commerce existed.

12 Second, that the enterprise was engaged in
13 racketeering activity.

14 Third, that the defendant had a position in
15 the enterprise.

16 Fourth, that the defendant knowingly and
17 unlawfully attempted to murder, or aided and abetted the
18 attempted murder of DF.

19 And, five, that one of the defendant's
20 purposes in doing so was to maintain or increase his
21 position in the enterprise.

22 As I mentioned before, the first, second,
23 third and fifth elements of this count are also elements
24 of racketeering charged in Counts 1, 4, 6, and 7, and my
25 prior instructions regarding those four elements apply

1 to all of these counts.

2 Now, the fourth element of the charge in
3 Count 2 requires the government to prove beyond a
4 reasonable doubt that the Defendant Jose Lopez Torres
5 unlawfully and knowingly attempted to murder, or aided
6 and abetted the attempted murder of DF.

7 To sustain its burden of proof against the
8 defendant for the crime of attempted murder, the
9 government must prove the following essential elements
10 beyond a reasonable doubt:

11 One, that the defendant intended to commit
12 the crime of murder, and thereafter the defendant did an
13 act constituting a substantial step toward the
14 commission of that crime.

15 Count 3 of the third superseding indictment
16 charges that on or about October 1, 2013, in Woodbridge,
17 Virginia, in the Eastern District of Virginia, that Jose
18 Lopez Torres knowingly possessed a firearm, to wit: a
19 short-barreled shotgun, in furtherance of a crime of
20 violence, for which he may be prosecuted in a court of
21 the United States, to wit: conspiracy to commit murder
22 in aid of racketeering as set forth in Count 1 of the
23 indictment, and attempted murder in aid of racketeering
24 as set forth in Count 2 of the indictment, and did aid
25 or abet, counsel, command, induce or cause another to

1 commit this offense.

2 Count 4 of the third superseding indictment
3 alleges that on or about October 7, 2013, in Fairfax
4 County, within the Eastern District of Virginia, for the
5 purpose of gaining entrance to, maintaining and
6 increasing position in MS-13, an enterprise engaged in
7 racketeering activity, that the Defendants Jose Lopez
8 Torres, Omar DeJesus Castillo, and Douglas Duran
9 Cerritos, together with others known and unknown to the
10 grand jury, knowingly and intentionally murdered Nelson
11 Omar Quintanilla Trujillo, in violation of the laws of
12 the Commonwealth of Virginia, and did aid, abet,
13 counsel, command, induce or cause another to commit said
14 offense.

15 Count 4. The essential elements of Count 4
16 are -- Count 4 charges Jose Lopez Torres, Omar DeJesus
17 Castillo and Douglas Duran Cerritos with a violent
18 crime, that is, murder in aid of racketeering.

19 To sustain its burden of proof against the
20 defendant for this crime, the government must prove the
21 following essential elements beyond a reasonable doubt:

22 One, that on or about the date alleged in
23 Count 4 of the indictment, an enterprise engaged in, or
24 activities which affect interstate or foreign commerce.

25 Two, that the enterprise was engaged in

1 racketeering activity.

2 Three, that the defendant had a position in
3 the enterprise.

4 Four, that the defendant knowingly and
5 unlawfully murdered, and aided and abetted the murder of
6 Nelson Omar Quintanilla Trujillo.

7 And five, that one of the defendant's
8 purposes in doing so was to maintain or increase his
9 position in the enterprise.

10 As I mentioned before, the first, second,
11 third, and fifth elements of this count are also
12 elements of racketeering as charged in Counts 1, 2, 6
13 and 7. My prior instructions concerning these four
14 elements apply to these in this count.

15 Count 5 of the third superseding indictment
16 charges that on or about October 2013, in the Eastern
17 District of Virginia, that Alvin Gaitan Benitez
18 knowingly committed an offense against the United
19 States, namely the murder of Nelson Omar Trujillo, on
20 October 7, 2013, as described in Count 4 of the
21 indictment, and knowingly received, relieved, comforted,
22 assisted others in order to hinder and prevent their
23 apprehension, trial, and punishment. The defendant,
24 together with others known and unknown to the grand
25 jury, reburied the body of Nelson Omar Quintanilla

1 Trujillo.

2 Count 6 alleges that on or about March 29,
3 2014, in the Eastern District of Virginia, for the
4 purpose of gaining entrance to and maintaining and
5 increasing position in MS-13, an enterprise engaged in
6 racketeering activity, that the defendants, Omar DeJesus
7 Castillo, Alvin Gaitan Benitez, Douglas Duran Cerritos,
8 Christian Lemus Cerna, Manuel Ernesto Paiz Guevara,
9 together with others known and unknown, knowingly and
10 intentionally murdered Gerson Adoni Martinez, in
11 violation of the laws of the Commonwealth of Virginia,
12 and did aid and abet, counsel, command, induce another
13 to commit the offense.

14 Count 7 charges that on June 19, 2014, in
15 the City of Alexandria, for the purpose of gaining
16 entrance to and maintaining and increasing position in
17 MS-13, an enterprise engaged in racketeering activity,
18 that the defendant, Jesus Alejandro Chavez, together
19 with others known and unknown to the grand jury,
20 knowingly and intentionally murdered Julio Urrutia, in
21 violation of the laws of the Commonwealth of Virginia,
22 and did aid, abet, counsel, command, induce another to
23 commit said offense.

24 Count 8 charges that on or about June 19,
25 2014, in the City of Alexandria, within the Eastern

1 District of Virginia, that Mr. Jesus Alejandro Chavez
2 knowingly used, carried, brandished, discharged a
3 firearm during, in relation to, and in furtherance of a
4 crime of violence, for which he may be prosecuted in a
5 court of the United States, to wit: murder in aid of
6 racketeering as set forth in Count 7 of the indictment,
7 and therefore knowingly and willfully caused the death
8 of Julio Urrutia, which killing was murder as defined in
9 the federal code, and that the defendant, with malice
10 aforethought, did unlawfully kill Julio Urrutia by
11 shooting him with a firearm.

12 Count 9 charges that the Defendant Jesus
13 Alejandro Chavez, having been convicted on or about
14 April 10, 2009, of a crime punishable by imprisonment
15 for a term exceeding one year, knowingly possessed a
16 firearm in and affecting commerce, said firearm having
17 been shipped and transported in interstate commerce.

18 This is an overview of the charges.

19 Let me state that as we go forward with the
20 trial -- let me explain to you how the trial will
21 proceed in this courtroom.

22 First, at the very outset, each of the
23 parties have the opportunity to make what's called an
24 opening statement, describing to you the -- I'm sorry.

25 Douglas Duran Cerritos is no longer charged

1 in Count 4. He's only charged in Count 6; Count 6, not
2 Count 4. I apologize.

3 Each party will make an opening statement.
4 And the purpose of opening statements is to give you an
5 overview of what they think the evidence will be.

6 Of course, the government will go first at
7 the beginning of the case, describing their theory of
8 the case and what they believe the witnesses will say.

9 Of course, the defendants are not required
10 to prove anything, and each defendant is not required to
11 make any opening statement. But if they choose to do
12 so, each defendant's counsel may make an opening
13 statement at the conclusion of the government's opening
14 statement.

15 What is said in opening statement is merely
16 an overview and it's not evidence. It's simply serves
17 as an introduction to the evidence in this case and what
18 the parties think they might produce during trial.

19 After any opening statements, then the
20 government will introduce evidence which it believes
21 supports the charges in the indictment.

22 The government -- after the government has
23 presented its evidence, then the defendants may present
24 evidence. But again, they are not required to produce
25 any evidence.

1 The burden, as you will be told many times
2 throughout this trial, is for the government to produce
3 evidence to support each and every element of the
4 offense against each defendant beyond a reasonable
5 doubt. The law never imposes upon a defendant in a
6 criminal case the burden or duty of calling any
7 witnesses or producing any evidence.

8 Fourth, after all the evidence has been
9 received, after all the witnesses have testified and
10 exhibits have been admitted, each party will be given an
11 opportunity to present closing arguments.

12 And before closing arguments, I will
13 describe to you all the legal principles to apply,
14 orally and I will provide them to you in writing.

15 The purpose of closing arguments is for the
16 lawyers to summarize the evidence from their point of
17 view. And the government will go first, recalling for
18 you what the witnesses' testimony would be from the
19 government's perspective, and providing to you their
20 view of why the evidence supports proof beyond a
21 reasonable doubt for each individual defendant.

22 Following the closing argument by the
23 government, the defendant will make a closing argument.
24 Each defendant will have the opportunity to make their
25 own closing argument, describing what the evidence has

1 been from each defendant's point of view, and why they
2 believe the government has not proven the charges and
3 where there is a reasonable doubt and why they should be
4 acquitted.

5 Throughout the trial, bear in mind that you
6 must keep an open mind and not make up your mind based
7 upon what you see as part of the testimony. You should
8 hear all the case before you begin formulating any
9 opinion about the case.

10 Your job as jurors is to determine the
11 facts. And under our principles of criminal law, you
12 are the sole judges of the facts, which means you are to
13 decide, as I told you, individually, what you think the
14 evidence has shown by the witnesses being presented.

15 Additionally, you are the sole judges of all
16 the facts in the case.

17 And the questions asked by the lawyers are
18 not evidence. Any observation I make is not evidence.
19 And the arguments of counsel, of course, are not
20 evidence.

21 During the course of the testimony of a
22 witness, if a lawyer believes that a question or the
23 answer to it may violate the rules of evidence, that
24 lawyer will stand up and say, "Objection." I will
25 either acknowledge the lawyer or acknowledge the other

1 lawyer, and then I will rule. And I'll either say the
2 objection is sustained, which means the question or the
3 answer to it may violate the rules of evidence. If I
4 say the objection is overruled, then that means my
5 judgment is that the question or the answer does not
6 violate the rules of evidence.

7 The rules of evidence, which have been
8 developed over many years, are designed to ensure that
9 what is presented to a jury is reliable and accurate.
10 So, therefore, do not concern yourself with the number
11 of objections made or sustained for one side or the
12 other.

13 And bear in mind that a lawyer can only
14 obtain a ruling from the judge if they stand and object
15 during the course of the witness's testimony and to
16 break the witness's testimony.

17 Of course, in deciding the weight to give
18 each individual witness, you may take into consideration
19 the appearance, attitude, and behavior of the witness on
20 the stand, the interest the witness might have in the
21 outcome of the case, the relationship the witness might
22 have to either side of the case, the inclination of the
23 witness to speak truthfully or not, and what you discern
24 to be the probability or improbability of the witness's
25 statement, and all other facts in evidence. In short,

1 you may give the testimony of each witness such weight
2 and value you determine it should receive.

3 Bear in mind that no statement, ruling or
4 remark I may make during the course of the trial is
5 intended in any way to influence you in making your
6 judgment of believability of witnesses.

7 Now, during the trial it may be necessary
8 from time to time for me to confer with counsel at
9 sidebar. I'll do everything I can to keep those
10 conferences to a minimum.

11 But bear in mind, these lawyers have to
12 present the case as they know it. And because I don't
13 know everything that they know about the case, it may be
14 necessary for me to take a bench conference, or it may
15 be necessary for me to take a recess.

16 Please be patient with me. It's not that
17 we're trying to keep anything from you. We're trying to
18 ensure that what is presented to the jury is reliable
19 and accurate.

20 Now I want to just give you some other
21 additional instructions, and that is, keep an open mind
22 throughout the case.

23 Don't discuss the case amongst yourselves.
24 Don't permit the case to be discussed in your presence.
25 You may not discuss the case until I tell you to do so,

1 and that will be at the end of the case.

2 You must not begin or have any conversations
3 with anyone, including your spouses, significant others.
4 It's only natural to want to share what you did for the
5 day, but jury duty is no ordinary day. And so tell your
6 family or friends, "I cannot discuss the case with you."

7 You have an important responsibility to
8 decide this case according to the evidence that you see
9 and hear in this courtroom only.

10 We will present to you all the evidence you
11 need to hear and see. If, during the course of a
12 witness's testimony, you believe some question is not
13 asked of a witness, do not concern yourself with it.
14 These lawyers are really highly trained. They have
15 studied this case and they will ask everything of the
16 witness they think is important.

17 I know that we're all connected to computers
18 and smart phones and the Internet. Please do not do any
19 research on this case, MS-13, or anything you may hear
20 about in the case.

21 Don't do any posting on any social media
22 like SnapChat, Instagram, Facebook, like, "I'm on jury
23 duty." That would violate your oath and it would harm
24 this case.

25 Again, don't visit any of the areas you may

1 hear referred to in this case, which may be locations
2 mentioned during the trial, unless you live there.
3 Don't go driving by there.

4 And again, the reasons for this is because
5 all the jurors -- that you see and hear all the evidence
6 presented here in court. And if you conduct your own
7 investigation you will be violating your oath.

8 To avoid the possible appearance of
9 impropriety, I strongly urge, until the trial is
10 concluded, that you not talk with anyone connected with
11 this case as a party, witness, attorney or, for that
12 matter, me or any of my staff.

13 If we see you in the elevator, we're not
14 going to speak to you. It's not that we're being rude.
15 We've been told not to do that.

16 If you go to lunch some place and one of the
17 parties or lawyers see you, they are not going to speak.
18 They are trying to avoid being in contact with you.

19 It's a very important case. What we ask you
20 to do is give the case your complete attention, the kind
21 of attention you would want given to you case or a
22 relative's case if they were in court. And we will ask
23 you to go forward now and be fair and impartial jurors.

24 We will have an opening statement from each
25 of the lawyers. The government counsel is asking for

1 one hour. And I'll give, for each opening statement,
2 time estimates will begin. And we will take a break
3 after we get started, a little bit later.

4 Government counsel, are you ready?

5 MR. CONTE: Your Honor, may we approach?

6 THE COURT: Yes.

7 MR. CONTE: Thank you.

8 (Sidebar conference held as follows:)

9 MR. CONTE: Your Honor, I know the Court
10 corrected itself and withdrew Mr. Cerritos' name from
11 Count 4, but it said that Mr. Cerritos was charged in
12 Count 4, and you said it twice.

13 I'm making an objection. I'm asking for a
14 mistrial. I think that's a bell that can't be unrung.

15 THE COURT: Okay.

16 MR. CONTE: I -- the jurors are taking
17 notes, and I'm sure they noted that Mr. Cerritos was
18 charged in Count 4.

19 MR. JENKINS: The interpreter can't hear.

20 THE COURT: All right. Repeat what you just
21 said.

22 MR. CONTE: I'm making an objection to the
23 Court's mentioning of my client in Count 4. It was
24 mentioned twice during the Court's instruction to the
25 jury, and I'm asking for a mistrial because I believe

1 that the statement, Mr. Cerritos -- Cerritos was charged
2 in Count 4, is something that can't be undone. But the
3 jurors have taken notes. They've already, I'm sure,
4 noted that.

5 It's now -- we're going to proceed to trial,
6 and any other mention, per the Court's order, that our
7 client is Homeboy One, I think is just going to relate
8 directly back to the Court's instruction and the jury's
9 initial belief that Mr. Cerritos was charged in Count 4.

10 I -- you know, I think the fair thing to do
11 is to -- for the Court to grant a mistrial at this time.

12 THE COURT: All right.

13 Government's response.

14 MS. MARTINEZ: Your Honor, we would oppose
15 the motion for a mistrial. We did note that Your Honor
16 mistakenly included Duran Cerritos twice during the
17 instructions. We agree with the observation of defense
18 counsel.

19 Your Honor did correct that. I don't know
20 whether any jurors took note of it or not, but they will
21 hear no other evidence -- they should hear no other
22 evidence throughout this case.

23 Mr. Duran Cerritos will be mentioned in the
24 government's opening solely in connection with Count 6,
25 and not at all in connection with Count 4. And, the

1 government would submit that at this point a mistrial is
2 not warranted.

3 THE COURT: You finished?

4 MR. CONTE: Yes, Your Honor.

5 THE COURT: All right.

6 Let the record reflect that I did make a
7 mistake in my opening discussions to the jury, which I
8 corrected. The jury is not going to be given a written
9 instruction. They heard orally what I said, and they
10 were taking notes.

11 At the end of the trial they will receive
12 detailed written instructions about each count of the
13 indictment, along with the indictment and a verdict
14 form. As the government correctly said, there won't be
15 any evidence concerning Mr. Cerritos in Count 4.

16 Therefore, the motion for mistrial is
17 denied.

18 Thank you very much.

19 (Thereupon, the side-bar conference was
20 concluded.)

21 THE COURT: Ready to proceed?

22 MS. MARTINEZ: I am, Your Honor.

23 THE COURT: You may proceed. Thank you.

24 OPENING STATEMENT BY THE GOVERNMENT

25 MS. MARTINEZ: Good morning, ladies and

1 gentlemen.

2 On October 1st, 2013, three members of the
3 gang MS-13 and one new recruit got into a car and drove
4 to Garfield High School in Woodbridge, Virginia.

5 You will learn that one of these gang
6 members was Defendant Jose Lopez Torres, whose gang
7 name, you will hear, is Greñas or Peluca. You will
8 learn and the evidence will show that these gang members
9 were acting, including Greñas, were acting at the behest
10 of their lead, Payaso, under instructions to go to the
11 high school, locate fellow gang member Peligroso, and
12 kill him.

13 The gang members had with them in the car
14 that night two machetes and a short-barrel 12-gauge
15 shotgun.

16 But you'll learn that fortunately for
17 Peligroso, when they got to Garfield High School that
18 night, they were greeted by the police. Officers pulled
19 them over, searched the vehicle, found the two machetes
20 and that 12-gauge shotgun, along with gang
21 paraphernalia, and arrested the gang members.

22 Peligroso was fortunate. He lived. And the
23 reason, as you will hear, is that unbeknownst to Greñas
24 and unbeknownst to their leader, Payaso, one of the
25 other gang members in the car that night, who you will

1 hear, his nickname was Drowsy, Drowsy had alerted the
2 police to this murder plot.

3 Drowsy had gone to the police. He had
4 agreed to conduct recorded phone calls. He had agreed
5 to wear a body wire to a gang meeting the day before, in
6 which the gang members, including Greñas, discussed this
7 murder, and he worked with the police to stop the murder
8 of Peligroso.

9 On the night of October 1st, 2013, that car
10 was under police surveillance from the moment that
11 Drowsy got into it until the defendant was arrested with
12 the other gang members.

13 Peligroso had been warned. He wasn't at the
14 high school.

15 And Drowsy was wearing a body wire to record
16 what the gang members were saying.

17 Peligroso was so fortunate, because he
18 lived.

19 But what you're going to hear during the
20 course of this trial is that there were three other
21 victims who did not; one attempted murder followed by
22 three murders.

23 The government will prove to you that on
24 October 7th, 2013, gang members killed Nelson Omar
25 Quintanilla Trujillo. We will prove that this murder

1 was conducted by, again, Defendant Jose Lopez Torres,
2 along with Defendant Omar DeJesus Castillo, and others.

3 The government will prove that on
4 March 29th, 2014, gang members killed Gerson Adoni
5 Martinez Aguilar. We will prove that this murder was
6 conducted by Defendant Omar DeJesus Castillo, Defendant
7 Douglas Duran Cerritos, Defendant Christian Lemus Cerna,
8 Defendant Alvin Gaitan Benitez, Defendant Manuel Ernesto
9 Paiz Guevara, and others.

10 And we will prove to you that on June 19th,
11 2014, the gang killed Julio Urrutia. We will prove that
12 this murder was conducted by Defendant Jesus Alejandro
13 Chavez and others.

14 This case is about MS-13. MS-13, as you
15 will hear in this trial, its full name is La Mara
16 Salvatrucha or, as you will also hear, La Mara.

17 MS-13, you will learn, is a violent street
18 gang with origins in Los Angeles and El Salvador, that
19 has spread across this country, including right here in
20 Virginia.

21 This case is about MS-13. But more
22 specifically, this case is about these seven defendants
23 seated behind me, each of whom the government will prove
24 through the course of this trial are members or
25 associates of MS-13.

1 But most importantly, this case is about the
2 fact that each one of those seven defendants committed
3 one or more murders on behalf of the gang.

4 You will hear in great detail about four
5 violent offenses that these defendants committed, an
6 attempted murder followed by three murders.

7 The first, chronologically, was the
8 attempted murder, the October 1st, 2013, attempted
9 murder of Peligroso, who you will learn his initials are
10 DF. That's the first event that happened
11 chronologically.

12 Then the government will prove that on
13 October 7th, 2013, the gang took the life of Nelson Omar
14 Quintanilla Trujillo.

15 Nelson Omar Quintanilla Trujillo was also a
16 gang member. You'll learn that his nickname, his gang
17 name, was Lagrima. The evidence will show that the gang
18 believed that Lagrima had violated one of the most
19 important rules in MS-13: Don't talk to the police.

20 You will hear that because the gang believed
21 that Lagrima was a snitch, or a rat, they plotted to
22 kill him. And the evidence will show that the gang did
23 just that, that Defendant Jose Lopez Torres, Defendant
24 Omar DeJesus Castillo, and others, lured Lagrima to
25 Holmes Run Park -- this is Jose Lopez Torres, ladies and

1 gentlemen, one of the defendants charged with killing
2 Lagrima.

3 The other defendant charged with killing
4 Lagrima is Omar DeJesus Castillo. His gang name is Lil
5 Payaso.

6 The evidence will prove, ladies and
7 gentlemen, that these two defendants, along with other
8 gang members, lured Lagrima to Holmes Run Park here in
9 Fairfax, Virginia, where they killed him, brutally,
10 stabbing him with knives, slashing him across the face
11 with a machete, and then they buried him in a shallow
12 grave in the park.

13 The gang struck again on March 30th, 2014 --
14 excuse me -- March 29th, 2014. And the evidence will
15 prove that this victim, this time, was an associate of
16 the gang, what they call a *chequeo*, someone who is
17 rising up in the gang, Gerson Adoni Martinez Aguilar,
18 whose gang name was Lil Guason.

19 The evidence will show that Lil Guason was
20 killed by Defendants Omar DeJesus Castillo, gang named
21 Lil Payaso; Defendant Douglas Duran Cerritos, gang named
22 Lil Poison or Guason; Defendant Christian Lemus Cerna,
23 gang named Leopardo or Vago; Defendant Alvin Gaitan
24 Benitez, gang named Pesadilla or Lil Tuner; and
25 Defendant Manuel Ernesto Paiz Guevara, gang named

1 Solitario.

2 The evidence will prove that these five
3 defendants, along with others, once again lured their
4 victims -- their victim, Lil Guason, to Holmes Park in
5 Fairfax, Virginia, and brutally slaughtered him,
6 stabbing him repeatedly in the chest, in the back, and
7 cutting off his head. They buried him in a shallow
8 grave.

9 And then on June 19th, 2014, the evidence
10 will prove that the gang killed Julio Urrutia. The
11 evidence will show that three gang members, including
12 Defendant Jesus Alejandro Chavez -- whose gang names are
13 Taliban or Chuy -- the evidence will prove that this
14 defendant, along with two others, went out that night on
15 June 19th, on the streets of Alexandria, specifically in
16 the Chirilagua neighborhood, looking for rival gang
17 members; and that while they were out they confronted a
18 group of young men, flashed their gang signs, challenged
19 them about gang affiliation, and then as the altercation
20 increased, Defendant Chavez, Taliban, pulled out a gun
21 and shot the victim point blank in the neck.

22 For these crimes that I just described to
23 you, these defendants are charged with what the law
24 calls violent crimes in aid of racketeering.

25 The judge began describing the law to you

1 prior to my opening statement, and he'll tell you more
2 at the end of the case. But violent crimes in aid of
3 racketeering are just what they sound, violent crimes
4 committed on behalf of what the law calls a racketeering
5 enterprise.

6 The government will prove that MS-13 is a
7 racketeering enterprise. The government will prove that
8 each of these defendants committed their respective acts
9 of violence, murders, in order to maintain or increase
10 their position within MS-13. Because, as you will
11 learn, MS-13 glorifies violence above all else, and
12 MS-13 is a criminal racketeering enterprise.

13 You'll learn a lot about MS-13 through the
14 course of this trial. We will have a gang expert who
15 will come in and speak to you, and you will hear from a
16 number of current and former gang members who will tell
17 you about the gang. They'll tell you about the gang's
18 presence, heavy presence, in El Salvador, elsewhere in
19 Latin America, in Central America, and that it has
20 spread across this country.

21 You'll learn that MS-13 has a presence in
22 the country via groups within the gang, which are called
23 cliques, and that there are active cliques here in
24 Virginia, as well as elsewhere, in Maryland, in New
25 York, in California, elsewhere in the United States.

1 You'll learn that MS-13 has an
2 organizational structure. The big leaders are down in
3 El Salvador. The cliques here in the United States
4 report to those big leaders. They send them money.
5 They work with them on drug trafficking. They work on
6 behalf of the cliques. You'll hear about defendants and
7 other MS-13 gang members in this case who did just that.

8 You'll learn that here in the United States
9 the leader of the cliques is called the first word. The
10 second in command is called the second word. Members of
11 the MS-13 are called homeboys or homies or -- or
12 soldiers.

13 Recruits within the gang, those who aren't
14 yet homeboys, are called *chequeo*, the word that you --
15 the Spanish word that you see there. A *chequeo* is
16 someone who has not yet earned full status within the
17 gang, hasn't earned full trust and respect within MS-13,
18 but who is trying to.

19 Below a *chequeo* is what's called a *paro*,
20 someone who does favors for the gang.

21 Now in order for a *chequeo* to advance within
22 the gang, to go from *chequeo* to homeboy, you'll learn
23 that they have to earn the respect of the gang. And
24 you'll learn that there is a number of ways for them to
25 do that.

1 What you'll hear is that traditionally, in
2 El Salvador, in order for a *chequeo* to become a homeboy,
3 he has to commit a murder. And that's how he earns the
4 respect and level of homeboy in the gang.

5 Now you'll hear that here in the United
6 States, that rule is sometimes applied and sometimes
7 it's not. But you will also learn about people in this
8 case, gang members in this case, who did just that,
9 committed a murder in order to go from *chequeo* to
10 homeboy.

11 You'll also hear that when a *chequeo* becomes
12 a homeboy, there's a ritual that welcomes him into the
13 gang. And this ritual involves -- this should come as
14 no surprise -- violence. When a *chequeo* is to become a
15 homeboy, he is encircled by the other homeboys. One of
16 them counts to 13, and while that homeboy counts to 13,
17 the others beat the *chequeo* with their fists, their
18 hands, and their feet. This is something they
19 voluntarily engage in. And at the end of that 13-second
20 beating, the *chequeo* has become a homeboy.

21 Thirteen is a prominent symbol within MS-13.
22 So is 503. 503 is the Area Code in El Salvador. You'll
23 hear throughout this case that 13 and 503 are symbols
24 that you'll see on clothing, or on tattoos, graffiti.

25 You will hear that gang members sometimes

1 get tattoos that say these symbols, or MS, or MS-13, or
2 the name of the clique that that person belongs to.
3 Although you will also hear that recently newer members
4 are encouraged not to get tattoos, so as to evade law
5 enforcement.

6 You'll hear about a number of other symbols
7 that the gang uses, as well as hand signs that they
8 flash in order to challenge others or greet members of
9 their own.

10 One of those hand signs is called the *garra*.
11 It symbolizes the devil. It looks something like this
12 (indicating), with the two fingers that I have up to
13 symbolize the devil's horns.

14 The devil is also a prominent symbol in
15 MS-13, and you'll hear that MS-13 members are thought to
16 work for or worship the devil, whom they also call the
17 beast.

18 Another thing that you will hear about in
19 this case is what's called a *calentón*. A *calentón* is
20 like that 13-second beating when they jump a *chequeo* as
21 a home -- into being a homeboy. But a *calentón* -- again
22 it's a 13-second beating -- it's in order to punish a
23 gang member, but for a smaller crime, for breaking a
24 smaller rule within MS-13.

25 So, when a *chequeo* or a homeboy, a member

1 associate of MS-13 breaks a small rule, he gets a
2 *calentón*. Again, this is something that they
3 voluntarily submit to.

4 *Calentóns* will play a prominent role in the
5 murders of Lagrima and Lil Guason, which I will describe
6 to you in further detail in a moment.

7 There are a lot of rules within MS-13. You
8 will hear about many of them throughout the course of
9 this case. One of the most important is, don't snitch.
10 Don't talk to the police. Don't be a rat.

11 That's the rule that the gang believed that
12 Lagrima broke. That's the reason that the gang killed
13 him.

14 Some of the other rules that you'll hear
15 about throughout this case are, don't disrespect fellow
16 homeboys. Don't steal from the gang or from the clique.
17 And homeboys must attack and kill rivals of member
18 gangs -- members of rival gangs, which they call
19 *chavalas*.

20 As I said, the government will prove that
21 MS-13 is what the law calls a racketeering enterprise.
22 In order to do that, we will show you that MS-13 engages
23 in a host of crimes, and that members and associates,
24 including these defendants, engage in crime on behalf of
25 the gang.

1 In addition to the attempted murder and the
2 murders that you will hear about, you will hear that the
3 gang engages in assaults, drug dealing, selling of a
4 variety of drugs -- cocaine, heroin, marijuana, crystal
5 meth.

6 You will hear that they work with other
7 homeboys in other states to move drugs around and to
8 move money around from the drug sales, and that they use
9 the money from drug sales to benefit the clique, to buy
10 weapons and other drugs, to send the money down to the
11 big leaders in El Salvador.

12 You'll also hear that sometimes the cliques
13 and the gang engage in other kinds of money-making
14 enterprises, such as prostitution.

15 In this case, the government will prove that
16 these seven defendants are members and associates of a
17 particular clique within MS-13, a clique here in
18 Virginia. The name of that clique is Park View Locos
19 Salvatruchas, abbreviated PVLS.

20 Within this clique, you will hear the
21 leader, his name was Payaso. You'll hear much about
22 Payaso in this case. He was running the clique from
23 within a prison. You'll hear that he had a contraband
24 cellphone within Powhatan prison down near Richmond, and
25 that he was running the clique and instructing these

1 gang members on his contraband cellphone.

2 You'll hear that the gang members had to
3 call in daily to Payaso, and you'll hear several telling
4 you that they did just that.

5 You'll hear that when they had gang
6 meetings, clique meetings, they would put Payaso on
7 speaker phone. And you'll hear about them doing that,
8 for example, when they planned the murder of Peligroso.

9 Now I would like to introduce these
10 defendants one by one, tell you about their role within
11 this clique, that the evidence will prove, and briefly
12 about the crimes that they are charged with.

13 Once I go through each of these seven
14 defendants, I'm then going to go through the violent
15 crimes in greater detail to give you a sense of the
16 witnesses that you'll expect to hear from and the facts
17 that the government expects we will prove to you.

18 I'll start first with Defendant Jose Lopez
19 Torres. He's seated right here, closest to me, in a
20 blue shirt. Jose Lopez Torres's nicknames, gang
21 nicknames, are Greñas -- that's the primary one that
22 you'll hear, although you'll also hear the nickname
23 Peluca.

24 Greñas, as I will call him, was a leader
25 within MS-13. Now I already told you that Payaso was

1 the leader. The evidence will show that Payaso was the
2 first word.

3 For the murder of Peligroso, on October 1st,
4 2013, you will hear about someone named Demente. And at
5 the time of Peligroso's murder, Demente was the second
6 word. But Demente was the driver of the car. He was
7 arrested that night, and he has been in jail ever since.
8 And so once the second word was arrested on October 1st,
9 2013, Greñas became the second word, the second in
10 command to Payaso.

11 The evidence will also show that one of
12 Grenas's roles within the clique was to work on the drug
13 sales, to be in charge of coordinating the drugs to the
14 gang and making the money for the gang in that way.

15 The evidence will also show that Greñas
16 murdered Lagrima.

17 Next, Defendant Omar DeJesus Castillo, who
18 is seated at the third table here, wearing a white shirt
19 and a pink checkered tie. This defendant's gang
20 nickname is Lil Payaso.

21 You will hear that Lil Payaso, at a time,
22 also played somewhat of a leadership role within the
23 clique. You'll learn that Greñas was arrested sometime
24 after the murder of Lagrima, but before the murder of
25 Lil Guason. And during that time period, Lil Payaso

1 took on somewhat of a leadership role.

2 You'll also learn that one of his roles
3 within the clique was to be one of the bigger guys.
4 Frankly, none of these guys sitting behind me are very
5 big, but Lagrima was one of the largest.

6 That victim was a -- was -- he was taller.
7 He was broader shouldered. He was bigger than most of
8 the other gang members. And Lil Payaso was one of the
9 next biggest. And you will learn that his size and his
10 ability to take on Lagrima played a prominent role in
11 the murder of Lagrima.

12 You will also learn that Lil Payaso went on
13 to also commit the murder of Lil Guason.

14 Next is Defendant Douglas Duran Cerritos.
15 He's seated at this first table here, towards the end.
16 He's wearing a blue shirt and dark-rimmed glasses today.

17 This defendant's gang name is Lil Poison.
18 You will also hear him referred to as Guason,
19 G-u-a-s-o-n, Guason.

20 You will learn that at the time of the
21 murder of Lil Guason, this defendant, Guason, was the
22 second word of the clique. You'll hear throughout this
23 case that these defendants became arrested one by one.
24 And as their leaders are arrested, others rise up to
25 take their place. And so at the time of the murder of

1 Lil Guason, Lil Poison was second word.

2 You will also learn that Lil Poison played a
3 prominent role in the gang with the drug dealings; that
4 at the time of the murder of Lil Guason, he was
5 essentially in charge of that, in charge of running the
6 drugs, of getting people to sell the drugs, of obtaining
7 the supplies.

8 You will also learn that he played a
9 prominent role in recruiting into MS-13. And that's one
10 thing you will hear about MS-13, that they recruit very
11 young men. And you will hear that Lil Poison recruited
12 these young men at J.E.B. Stuart High School, where he
13 was a high school student.

14 Next, Defendant Christian Lemus Cerna. He's
15 seated at this last table here -- he was just looking
16 right at me -- white shirt, short sleeves. His gang
17 name is Leopardo. You will also hear him referred to as
18 Bago, B-a-g-o, or Vago, V-a-g-o.

19 Leopardo was also a homeboy within the
20 clique. He was also rising up towards leadership, which
21 you will learn. And you will hear about the eager role
22 he played in the murder of Lil Guason.

23 You will also learn that he was somewhat of
24 the clique's bookkeeper, that when there were clique
25 meetings, the members would have to pay dues, and he

1 would keep track of it in a notebook. You'll see one of
2 these notebooks during the course of the trial.

3 Next, Alvin Gaitan Benitez, gang named
4 Pesadilla. This defendant is seated here at the second
5 table. He just pointed to himself when I said his name.
6 He's wearing a white shirt. He's looking at me now.
7 Pesadilla was also a homeboy.

8 The evidence will show that Pesadilla wasn't
9 there the night of Lagrima's murder, but he was there a
10 short time later when the gang decided that someone
11 might find the body, and so, the evidence will show,
12 gang members, including some who were there for the
13 murder, and Pesadilla, went back, dug up the body and
14 reburied it in another location in the park.

15 The evidence will also show Pesadilla's
16 eager and prominent role in the murder of Lil Guason.

17 Next, Defendant Manuel Ernesto Paiz Guevara,
18 gang name Solitario. Solitario is seated at the last
19 table at the back. He's wearing a black shirt, half
20 zipped, sitting right now with his hand on his face.

21 Solitario, the evidence will show, was not
22 yet a homeboy at the time of the murder of Lil Guason.
23 Solitario was a *chequeo*, a recruit within the gang. And
24 the evidence will show that he was eagerly learning the
25 rules of La Mara and rising up within the gang. He was

1 a *chequeo* who, the evidence will show, participated in
2 the murder of Lil Guason.

3 And finally, Defendant Jesus Alejandro
4 Chavez, seated here at the middle table, towards the
5 back. He's wearing a green shirt, a sports jacket, and
6 dark-rimmed glasses.

7 Defendant Chavez, whose gang names are Chuy,
8 you'll also hear Taliban -- the evidence will show that
9 Taliban was in jail for most of these activities, that
10 he had only been out for about a week at the time of the
11 murder of Julio Urrutia.

12 But the evidence will show that he lost no
13 time, once he got out of jail, trying to get in good
14 with this clique, hanging out with gang members in the
15 Chirilagua neighborhood of Alexandria, Virginia, and on
16 June 19th, 2014, shooting Julio Urrutia point blank in
17 the neck.

18 This case is about MS-13. This case is
19 about these defendants, members and associates of MS-13.
20 But most importantly, this case is about those four
21 violent events, the attempted murder and the three
22 murders.

23 In order to tell you -- in order to prove to
24 you beyond a reasonable doubt that these defendants
25 committed those offenses, I have to tell you how we

1 solved them.

2 Starting with the attempted murder of
3 Peligroso, I already told you about Drowsy. Drowsy, the
4 homeboy who went to the police and helped stop the plot
5 to kill Peligroso, whose initials are DF.

6 As I said, he recorded phone calls. He wore
7 a body wire and recorded the gang members, including
8 Defendant Greñas, talking about the murder, and he wore
9 a body wire in the car that night.

10 Now these defendants speak in Spanish when
11 they speak to each other in person and on the phone, and
12 so the recordings, of course, are in Spanish.

13 The government will present those recordings
14 to you, along with English transcripts of the
15 recordings. And you'll hear from Spanish language
16 linguists who will tell you that they listened to these
17 recordings and transcribed them into English.

18 You'll also hear some of the recordings,
19 short clips of them. You won't be able to understand
20 them, but they will help you hear the tone of voice and
21 the way that the defendants spoke. But you will always
22 have an English transcript to read along.

23 You will read in this English transcript
24 about the defendants, including Greñas, and his leader,
25 Payaso, discussing how they were going to kill

1 Peligroso, discussing the machetes, discussing the
2 12-gauge shotgun.

3 You will hear Greñas, in a recording,
4 advocate for the use of a firearm, for the 12, referring
5 to the 12-gauge shotgun.

6 And you'll hear the leader, Payaso, berating
7 the driver, Demente -- who I will get to in a moment --
8 on his way to the high school for not having the
9 machetes sharp enough.

10 You will also hear from Demente. Demente
11 was the driver of the car that night. His full name is
12 Jaime Rosales Villegas. He was the second word of the
13 clique. He was a homeboy. And he has pled guilty to
14 conspiracy to commit murder in aid of racketeering,
15 attempted murder in aid of racketeering, and the use of
16 a firearm in the aid of a crime of violence.

17 Demente is what we call a cooperating
18 defendant. Demente's testimony, in which he will
19 describe the gang's plan and what they did that night,
20 corroborated by the recordings that Drowsy made, will
21 prove beyond a reasonable doubt that Greñas and others
22 conspired and attempted to kill Peligroso.

23 But Peligroso lived. Peligroso was
24 fortunate.

25 Our three murder victims were not nearly so

1 fortunate. No one came forward and told the police that
2 these victims were going to die. No one stopped those
3 murder plots. But fortunately, we were able to solve
4 them, and we were able to do that with the aid of yet
5 more recordings by these defendants.

6 Another witness you will hear from during
7 this trial is someone whose gang name, whose nickname,
8 is Junior. Junior, to these defendants, was a trusted
9 member of MS-13 in another clique. But in reality,
10 Junior was working with the FBI.

11 Junior was what the FBI calls a confidential
12 human source, a CHS. And Junior had been a confidential
13 human source for years, long before the attempted murder
14 of Peligroso, long before the three murders I've talked
15 about today. Junior had been working with the FBI for
16 quite some time. In fact, you'll even hear Junior has
17 testified in open court before.

18 And yet, these gang members believed that he
19 was a gang member, that he was a trusted gang member,
20 that he was someone whom they could open up to.

21 And so you'll hear from Junior, and from the
22 FBI agents who worked with him, that Junior started
23 hearing more and more about this clique, about PVLS, and
24 the violent crimes that they were engaging in. And as
25 he began hearing more, Junior, working with the FBI,

1 came up with a plan to put a consensual wiretap on
2 Junior's phone, a wiretap, just what it sounds like,
3 just like you see on TV. It records every phone call
4 and every text message. And again, this is with
5 Junior's consent. Junior knew this was happening.

6 So over the next ten months, over the course
7 of ten months, every single phone call, every single
8 text message, you will learn, was recorded and was
9 logged.

10 And you'll hear from Junior that he began
11 talking to these defendants, and that over time they
12 spoke to him more and more, they trusted him, and they
13 opened up to him.

14 Sadly, none of them told Junior in advance
15 of these murders. The FBI was not able to stop the
16 murders from happening.

17 But they did brag about it after it
18 happened, and they did tell Junior the details, and they
19 did tell Junior who, what, when and where. And it was
20 with these recordings that we were able to solve the
21 three murders.

22 You will hear and see English transcripts of
23 these recordings. Again, the defendants and Junior all
24 spoke in Spanish, and so there will be tapes admitted
25 with the recorded calls, and there will be English

1 transcripts of the recorded calls.

2 Junior also on occasion wore body wires to
3 meetings with these defendants and other gang members,
4 and you will see some transcripts, again in English, of
5 what the defendants said during these recorded meetings.

6 In addition to the transcripts and the calls
7 and Junior's testimony, you will also hear from
8 cooperating defendants.

9 Now, none of these cooperating defendants
10 were like Drowsy. None of them alerted the police or
11 the FBI in advance of the murders. But what they did
12 do, after they were charged, is take responsibility,
13 plead guilty, and agree to cooperate with law
14 enforcement.

15 These cooperating defendants will tell you
16 all about the gang, about MS-13, about the clique, about
17 the rules, the leadership structure, all of that stuff
18 about the gang that I spoke about earlier.

19 They will also tell you about the murders.
20 And let me be clear, you will hear a lot about these
21 cooperating defendants. I imagine you'll hear about
22 them during defense counsel's opening statements.
23 You'll hear about them throughout this case.

24 I'm not going to mince words. These are bad
25 people. They're murderers. They're people who have

1 pled guilty to murder. They are people who at one point
2 thought it was a good idea to brutally slaughter a
3 victim in a park and bury him in a shallow grave, or to
4 shoot someone in the face on the streets of Alexandria.
5 They're murderers.

6 But they were there. They had front row
7 seats. They saw what happened. You will have to judge
8 their credibility for yourselves, ladies and gentlemen.
9 When they sit on that witness stand and they tell you
10 what they did and what these defendants did, you will
11 have to judge their credibility.

12 But I'll submit to you that what they will
13 tell you, what they will describe, will be credible. It
14 will be credible because you will hear from more than
15 one cooperating defendant for each of the charged
16 violent offenses.

17 And you will hear the details from one
18 cooperating defendant to another. Not every single
19 detail will be the same, which I submit would not be
20 believable. But the primary details, the big details,
21 the who, what, when, where, why, and how, will be the
22 same.

23 And in addition to corroborating each other,
24 the cooperating defendants' testimony will be
25 corroborated by those recorded calls, by these

1 defendants' own admissions to Junior.

2 Now, as I said, you will hear from Demente.
3 Demente will talk to you about the attempted murder of
4 Peligroso. Demente was the driver of the car that
5 night.

6 He will describe to you the fact that the
7 gang plotted to kill Peligroso, that the plan was either
8 machetes or a firearm, that he got into the -- the car
9 that night with Drowsy and with Greñas and with the
10 recruit, that they drove to the high school, and that
11 they were going to kill Peligroso.

12 In addition to Demente, you will hear from
13 four other cooperating defendants, starting first with
14 Skinny.

15 Skinny's full name is Juan Carlos Marquez
16 Ayala. Skinny was a homeboy in the clique, in the PVLS
17 clique, and he did a lot of drug dealing: marijuana,
18 cocaine, crystal meth, heroin. He sold a lot of drugs
19 for the clique.

20 In fact, that's how he earned respect within
21 the clique. That's how he earned the respect of the
22 leader, Payaso. It's how he was able to rise up to the
23 level of homeboy.

24 Skinny will also tell you somewhat about the
25 attempted murder of Peligroso. He also knew about the

1 plot. He also knew the who, when, where, why and how,
2 and he will testify about that attempted murder.

3 He will also testify about the murder of
4 Lagrima, which he participated in, and for which he pled
5 guilty to murder in aid of racketeering.

6 Skinny will tell you that after the
7 attempted murder of Peligroso, and after Demente was
8 arrested, that Greñas, who was arrested but let out --
9 that Greñas was determined to figure out who had alerted
10 the police, who snitched.

11 Luckily for Drowsy, Greñas didn't suspect
12 Drowsy. He suspected Lagrima. Skinny will tell you
13 that Greñas grew obsessed with the idea that Lagrima was
14 a snitch, that he had ratted out Greñas and Demente to
15 the police; that he opened what the gang calls an
16 investigation, and that he presented his evidence to the
17 leaders and obtained what MS-13 calls a green light. A
18 green light is an order to kill.

19 You will hear that all four of the victims,
20 Peligroso, Lagrima, Little -- well, not all four, excuse
21 me -- three of the four victims -- Peligroso, Lagrima
22 and Lil Guason -- all had green lights on them.

23 Skinny will tell you that after Greñas
24 decided that Lagrima was a rat, the gang got together
25 and made a plan. They made a plan about how they would

1 kill Lagrima. And they'll tell you that the plan was
2 that they would lure Lagrima to Holmes Run Park by
3 telling him that he had violated some of those minor
4 rules that I mentioned, and that because he had violated
5 a minor rule, he had to have a *calentón*.

6 So going back to a *calentón*, a *calentón* is
7 that 13-second beating to punish someone for violating a
8 minor rule of MS-13.

9 And then the plan would be that when Lagrima
10 submitted to the *calentón*, instead of just beating him,
11 they would kill him.

12 And Skinny will tell you that they carried
13 out this plan, this plan that was hatched by Defendant
14 Greñas, and which Defendant Lil Payaso knew full well
15 about. On the night of October 7th, 2013, the gang
16 carried out that plan.

17 Skinny will tell you that Lagrima came to
18 the park that night, that they had a gang meeting, that
19 Greñas was there, that Lil Payaso was there, that Skinny
20 was there, that two of the other cooperating
21 defendants -- who I'll get to in a moment -- were there,
22 and that others were there. And at this gang meeting,
23 the gang told Lagrima he had to have a *calentón*.

24 So then he got to the center, and they began
25 hitting him. And here is where -- remember I told you

1 Lil Payaso is one of the bigger members of MS-13. Here
2 is where his role came in, along with Skinny, who was
3 also a little bit larger.

4 The plan was that these two would engage in
5 the *calentón*, because Lagrima was so large they were
6 afraid they wouldn't be able to knock him down quickly.
7 But with the help of Skinny and Lil Payaso, knock him
8 down, they did.

9 And in the words of Lil Payaso in a recorded
10 call after the murder, a while after the murder, to
11 Junior, quote, "When he fell, I went at him with
12 everything, homey, took him down fast. I knocked the
13 air out of him."

14 Skinny will tell you that once Lagrima was
15 on the ground, one of the homeboys jumped forward and
16 stabbed him in the stomach with a knife, and then
17 slashed him across the face with a machete.

18 He will tell you that as they were stabbing
19 him and slashing him, Greñas told him that he would die
20 for being a rat; that he begged for his life while they
21 were killing him.

22 In the words of Greñas in a recorded call
23 with Junior later -- and excuse my language -- "Son of a
24 bitch was saying, 'No man. If I messed up, I swear to
25 you I will tell you. But don't kill me. I know that I

1 ratted on you guys, but spare my life. I'll go very far
2 away.' 'Yes, you're going far,' I told him. 'Kill him,
3 son of a bitch,' I told him at the end"; followed by
4 laughter.

5 After the gang had killed Lagrima, they
6 carried his body to a hole that they had dug earlier as
7 part of the plan. They put him in the hole and they
8 buried him underneath rocks and dirt.

9 And then afterwards, they celebrated by
10 jumping in another *chequeo* to be a homeboy. This
11 chequeo's name is -- his nickname was Slow. He's
12 another one of the cooperating defendants that you'll
13 hear from.

14 And so after they murdered Lagrima and
15 buried Lagrima, they celebrated by making Slow a
16 homeboy.

17 Then you will hear, from Skinny and from
18 others, that after the murder of Lagrima, the gang
19 members on occasion visited the grave to check on it, to
20 see whether someone might find it. And eventually, they
21 decided that someone might find it.

22 And so they decided they needed to dig up
23 the body and move it to another hole, which the evidence
24 will show they did, along with Defendant Pesadilla, who
25 participated in reburying Lagrima's body, as did Greñas.

1 And in his words, in another recorded call to Junior,
2 "We dismembered him. Two times we dismembered him. We
3 reburied him, and then we went and took him out, and we
4 dismembered him and we reburied him again."

5 The second -- well, the third cooperating
6 defendant you will hear from is Lil Slow, whom I
7 mentioned earlier, the *chequeo* who became a homeboy with
8 the murder of Lagrima.

9 Slow's full name is Araely Santiago
10 Villanueva. You will hear him called both Slow and Lil
11 Slow.

12 Lil Slow was a *chequeo* for the murder of
13 Lagrima, which meant that he wasn't involved in planning
14 the murder. He didn't know in advance. But he knew
15 that night. The gang told him, and he participated.
16 And as I said, and as he will tell you, and as Skinny
17 will tell you, after the murder he was jumped into the
18 gang as a homeboy. And as a homeboy, Slow participated
19 in the murder of Lil Guason.

20 Slow has pled guilty in murder in aid of
21 racketeering, and he will testify here on that stand as
22 a cooperating defendant.

23 In addition to telling you about the murder
24 of Lagrima, corroborating the testimony that you will
25 hear from Skinny, he will tell you about the murder of

1 Lil Guason. He will tell you that Lil Guason, Gerson
2 Adoni Martinez Aguilar, was a *chequeo* in the gang. Slow
3 was a *chequeo* at the time of the murder of Lagrima, and
4 Lil Guason was a *chequeo* at the time of his murder.

5 Slow will tell you that at the time of the
6 murder of Lil Guason, Lil Poison was running the gang --
7 was running the clique. Excuse me. And he will tell
8 you that Lil Poison and others came up with a plot to
9 kill Lil Guason.

10 Now, Lil Guason was not accused of being a
11 snitch like Lagrima, but he was accused of violating
12 other gang rules. Here were his offenses. He was
13 selling drugs for the gang and he failed to give them
14 \$600, and he was suspected of sleeping with the
15 girlfriend of Skinny, who by this time was in jail. So,
16 for stealing \$600 from the clique and sleeping with
17 another homeboy's girlfriend, the gang decided to kill
18 him.

19 So Slow will tell you about the plan that
20 they hatched to kill Lil Guason. And Slow will tell you
21 that involved in this plan, involved in making the plan,
22 in addition to Slow, were Lil Poison, Leopardo, Lil
23 Payaso, Pesadilla, and another cooperator you will hear
24 about in a moment named Duende.

25 The plan was very similar to the plan to

1 kill Lagrima. Once again, the gang planned to lure the
2 victim to Holmes Run Park, telling him that there would
3 be a gang meeting, that he had violated various minor
4 rules -- even more minor than the \$600 and sleeping with
5 someone's girlfriend -- and that he should have a --
6 that he should have a *calentón*. And then instead of the
7 *calentón*, instead of beating him, they would kill him.

8 And Slow will tell you that that is exactly
9 what they did, that on the night of March 29th, 2014,
10 they lured Lil Guason to Holmes Run Park. Slow was
11 there. Lil Poison was there. Leopardo was there. Lil
12 Payaso was there. Pesadilla was there. And Solitario
13 was there.

14 Solitario was another *chequeo* at the time.
15 He was rising up in the gang, just like Slow had been
16 rising up in the gang at the time of Lagrima's murder.

17 And with these gang members all there, in
18 addition to Slow and Duende, the other cooperator you
19 will hear about, they told Lil Guason that he was to
20 receive a *calentón*. And so Lil Guason got to the center
21 of the group, someone began counting, they began beating
22 him, and then they began stabbing him.

23 They jumped on him, starting first with
24 Pesadilla. Pesadilla attacked him and, in his own words
25 in a recorded call later with Junior, "We dropped in on

1 him with the excuse that we were going to correct him,
2 you know, right? Because he needed to, to take care of
3 the 600 bucks that day, you know. And then, that's when
4 we hit him. I was calm with the knife in my hand."

5 Pesadilla stabbed him. Lil Poison stabbed
6 him. Leopardo stabbed him. Lil Payaso stabbed him.
7 Solitario stabbed him. And Slow stabbed him. They
8 stabbed him again and again in the back and in the neck.
9 And then they cut off his head.

10 As Leopardo said, in a recording with
11 Junior -- and forgive the language -- "We chopped that
12 fucker's head off."

13 Once he was dead, they took his severed
14 head, they put it in a canvas bag, and they carried his
15 body and the head to a shallow grave that they dug
16 earlier. You'll hear that they dumped in his lifeless
17 body. They dumped in the head; and that although he was
18 small, he didn't fit in the hole. And so Duende took a
19 pickax and chopped at his legs so they could bend them
20 over on top of the body. They buried him beneath dirt
21 and rocks.

22 You'll learn that the FBI was able to
23 recover these bodies, the bodies of Lagrima and Lil
24 Guason. The FBI was able to do this with the help of
25 Junior.

1 Junior will tell you that as he heard more
2 and more about these murders, as he began to believe
3 that they had actually happened, he grew determined to
4 find the bodies for their families. And so he began
5 talking more and more to these defendants, and
6 particularly Leopardo, who lost no opportunity to
7 describe the murder of Lil Guason in great detail.

8 And eventually, Leopardo was able --
9 eventually, Junior was able to convince Leopardo to lead
10 him to the place where they had killed Lil Guason and to
11 the location where the gang had reburied Lagrima.

12 You'll get to see some of this on tape,
13 because that day Junior wore a body wire with a video
14 camera. And on video, you will see Leopardo leading
15 Junior to these burial sites in Holmes Run Park.

16 After Junior successfully convinced Leopardo
17 to do this, the FBI recovered the bodies. They dug them
18 up. You'll see pictures, the rocks and the dirt and the
19 mutilated bodies, Lil Guason's head in a bag.

20 Drs. (sic) DiAngelo and Drs. (Sic) Hunt, who
21 did the autopsy and examined the body, the medical
22 examiner and the forensic pathologist, they'll describe
23 these injuries to you. They'll describe how Lagrima's
24 jaw was slashed off his face from being slashed with
25 that machete.

1 They'll tell you about stab wounds so hard
2 and so deep that they cracked bone; that Lagrima's skull
3 was cracked; the numerous, countless stab wounds on Lil
4 Guason's back and neck; the severed head; his broken,
5 mutilated legs.

6 You will also hear about these murders from
7 someone named Duende. Duende is another cooperating
8 defendant. His full name is Jose Del Cid.

9 Duende, ladies and gentlemen, is no
10 choirboy. He will testify he has pled guilty to murder
11 in aid of racketeering. And he will tell you himself
12 that he was recruited into the gang as a young boy in El
13 Salvador, that he has committed a great number of
14 murders, that he has engaged in significant acts of
15 violence on behalf of this gang, including the murders I
16 described, but others as well.

17 Duende is no choirboy. But he was there.
18 He knew -- he was there for everything. He knew about
19 the plot on Peligroso. He was there for the murder of
20 Lagrima and Lil Guason, and he was there for the third
21 murder of Julio Urrutia.

22 Duende will sit on that stand and he will
23 describe the murders of Lagrima and Lil Guason. His
24 testimony will corroborate Skinny and Slow. He will
25 tell you the who, what, when, where, why, and how.

1 And then he will tell you about the murder
2 of Julio Urrutia. He will tell you that on the night of
3 June 19th, 2014, he was in Alexandria, in the Chirilagua
4 neighborhood, which is up near the intersections of
5 Russell Road and Mount Vernon.

6 He will tell you that night he was out with
7 a group of MS-13 members and recruits and general
8 associates. These people included Genaro Sen Garcia,
9 nicknamed Gatuso, who is the last cooperating defendant
10 you will hear from.

11 In addition to Duende and Gatuso, with them
12 that night was Defendant Jesus Alejandro Chavez, Taliban
13 or Chuy; also, Taliban's sister, Lala, and a *chequeo*
14 named Sixto Solano.

15 Duende and Gatuso will tell you that they
16 went out that night in the Chirilagua neighborhood of
17 Alexandria looking for rival gang members, whom the gang
18 calls *chavalas*. They went out looking for a fight.
19 You'll hear that the defendant, Taliban, and Gatuso,
20 were both armed with knives.

21 You will hear that they saw some people that
22 they thought were members of 18th Street, one of the
23 rival gangs of MS-13; that they tried to challenge these
24 members. But after trying to challenge them, they
25 failed.

1 And so they saw some other young kids, and
2 they gave chase to them. They chased them down the
3 street.

4 At this point the four people involved were
5 Duende and Gatuso, Defendant Taliban, and the *chequeo*,
6 Sixto Solano. They gave chase, but they lost the people
7 that they were chasing.

8 And so then, Defendant Taliban brought the
9 other three to a nearby apartment building. Taliban,
10 Chuy, went inside, went into an apartment, and came out
11 with a gun. He came out with a gun and black gloves,
12 which he was wearing on a hot June night. And you'll
13 hear that he said something like, "Now they'll know who
14 they're dealing with."

15 And so the group of these four young men
16 continued back towards Russell Road, where they had been
17 giving chase to the young boys. You'll hear that
18 Duende, Gatuso and Taliban told the *chequeo*, Sixto
19 Solano, to get lost, to take off. Because luckily for
20 Sixto Solano, for whatever reason, this time, in this
21 murder, the *chequeo* wasn't invited.

22 So Sixto left, and Taliban, Duende and
23 Gatuso, continued down the street. In front of them
24 they saw a group of young men, which includes the
25 victim, Julio Urrutia. As they approached, they flashed

1 their gang signs and they challenged the group about
2 their gang affiliation.

3 They argued with this group, including Julio
4 Urrutia and an innocent bystander, Vidal Jimenez. And
5 then as the altercation increased, Taliban took out the
6 gun and shot Julio Urrutia point blank in the neck. He
7 died at the hospital two days later.

8 Now, you'll hear that the police were unable
9 to recover that gun or the bullet or the shell casing.
10 But both Duende and Gatuso, and Vidal Jimenez, their
11 testimony will establish and prove beyond any reasonable
12 doubt that the shooter that night, the person who
13 murdered Julio Urrutia, was Defendant Jesus Alejandro
14 Chavez.

15 They will all agree that the bigger guy --
16 and you'll hear and see that Taliban was bigger than
17 Gatuso and Duende -- that the bigger guy with the black
18 gloves, Taliban, shot and killed Julio Urrutia.

19 And then you will hear that after the
20 murder, Taliban lost no time talking about being jumped
21 into this clique of PVLS, and you'll hear about that in
22 another recorded call with Junior.

23 Over the course of this trial, the
24 government will prove to you that these defendants,
25 these seven defendants, members and associates of MS-13

1 and the PVLS clique, along with other gang members,
2 committed the four violent offenses I've described, the
3 murder (sic) and the three murders.

4 We will prove beyond any reasonable doubt
5 that Greñas, along with Payaso, Demente and others
6 conspired to kill Peligroso with machetes or a firearm;
7 and that Greñas committed that murder -- or, excuse
8 me -- attempted to commit that murder on October 1st,
9 2013.

10 We will prove that Greñas, Lil Payaso, along
11 with Skinny, Slow, Duende and others, then murdered
12 Lagrima.

13 And we will prove that Lil Payaso, Lil
14 Poison, Leopardo, Pesadilla and Solitario, along with
15 Slow and Duende, murdered Lil Guason.

16 And finally, we will prove that Taliban,
17 along with Duende and Gatuso, murdered Julio Urrutia.

18 We will prove that each of these defendants
19 committed their respective acts of violence, their
20 murders, for the gang to gain, maintain or increase
21 their status in a gang that glorifies violence above all
22 else and rewards those who engage in it.

23 For that, these defendants are charged with
24 violent crimes in aid of racketeering. And at the end
25 of this case, we will come to you and we will ask you to

1 do justice for Peligroso, who lived, and for Nelson Omar
2 Quintanilla Trujillo, Gerson Adoni Martinez Aguilar, and
3 Julio Urrutia, who did not. We will ask you to do
4 justice for the victims and to find these defendants
5 guilty.

6 Thank you.

7 THE COURT: Why don't we all get a stretch
8 before the next argument, which is about 20 minutes, and
9 then we will take a break.

10 You can stand. I just want to give you a
11 chance to stretch. I need to stretch myself. The next
12 argument is about 20 minutes.

13 (Pause.)

14 THE COURT: You may be seated.

15 Counsel, you may proceed.

16 MR. LEIVA: Thank you. May it please the
17 Court.

18 OPENING STATEMENT BY DEFENDANT LOPEZ TORRES

19 MR. LEIVA: Good morning, ladies and
20 gentlemen of the jury. Once again, my name is Manuel
21 Leiva. My co-counsel is Robert Jenkins, and we
22 represent Mr. Lopez Torres.

23 Back in 1980, a small country in
24 El Salvador -- in Central America, El Salvador, a civil
25 war started. The country is about the size of

1 Massachusetts. And at the time the civil war started,
2 there were about 5 million people living in El Salvador.

3 The country was controlled by a ruthless and
4 very oppressive government that used its military, its
5 police force and death squads to terrorize the
6 population, to quell any opposition and to maintain
7 power.

8 Most of the population of El Salvador lived
9 in poverty. El Salvador's economy was based on
10 agriculture, so most of the people who lived in poverty
11 were farmers. And the people who owned the wealth in
12 the country were rich landowners, who the government
13 supported, and they in turn supported the government.

14 A segment of the population rose up in arms
15 against this oppressive government, and a civil war
16 started. Two years into the civil war, the
17 insurgency -- or people called them guerrillas back in
18 the '70s and '80s -- were about to take power from this
19 oppressive government. The United States intervened,
20 propped up the government, and sent military advisors,
21 weapons and aid totaling about a million dollars a day
22 to this small impoverished nation. As a result of that,
23 the war extended for another ten years, and the El
24 Salvadoran civil war lasted for 12 years.

25 With the infusion of the money from the

1 U.S., the government became more ruthless. Death squads
2 became more active. Any political opposition was
3 executed. Nuns were killed. The archbishop of El
4 Salvador was murdered in cold blood. Foreign
5 journalists were executed.

6 As a result, thousands, tens of thousands of
7 Salvadorans fled the civil war. And a segment of that
8 population of refugees that fled the civil war landed in
9 California, specifically in Los Angeles.

10 Given that they were refugees and were of
11 poor means, they lived in neighborhoods in Los Angeles
12 that were economically deprived, that were controlled by
13 gangs, and that had high crime rates.

14 These new arrivals, these new Salvadoran
15 refugees, found themselves in these neighborhoods, being
16 victimized once again, but this time by a different
17 force, the force being these gangs, these entrenched LA
18 gangs.

19 So what they did is, they decided to form
20 their own group to defend themselves. This new group
21 that formed morphed into what is now MS-13.

22 Now, the government made a mention of the
23 horn that you will see displayed, I'm assuming, by some
24 of the government's witnesses, and you may see some
25 pictures of it. And they make reference that MS-13 is

1 involved in satanic rituals.

2 But you will hear from the government's own
3 witness, if indeed that person is an expert in MS-13,
4 that this core group of individuals that formed MS-13 in
5 LA were hardcore -- hardcore metal fans, or what we
6 called back in my day, head-bangers, and they listened
7 to hard rock music. And they adapted into their lexicon
8 and nomenclature certain symbols that were prevalent
9 back in the days of heavy metal. And one of those was
10 this particular sign. And I'm expecting that the
11 government's witness will explain that to you.

12 So, we had these refugees that escaped from
13 the civil war. Twelve years later, the war ends in
14 El Salvador. In the early '90s -- and that's around the
15 time, '92, when the war ended, around that time the U.S.
16 started mass deportations of these individuals who were
17 involved in criminal activity. And there were mass
18 deportations of gang members, be they 18th Street gang
19 members or MS-13 gang members.

20 After the war in El Salvador, El Salvador
21 was basically left in ruins. Its economy was in
22 shambles. The societal infrastructure was in shambles,
23 and the safety nets that once existed in El Salvador
24 were no longer there.

25 The government of El Salvador was

1 ill-prepared to absorb these vast numbers of people that
2 were being deported from the United States and who were
3 bringing this gang culture with them that was foreign to
4 El Salvador. Foreign did not -- El Salvador did not
5 have a gang problem until the mass deportations from the
6 United States, specifically from LA.

7 So, why am I telling you this? Why am I
8 giving you this brief historical perspective?

9 Because Lopez -- Mr. Lopez Torres was born
10 and raised into this culture of a country that was
11 recuperating from a destructive civil war and was now
12 being hit with gang culture that did not exist before.

13 And as the government mentioned in opening
14 statements, it's a gang culture which held up violence.
15 And as a result of being raised in that culture, you had
16 to be a tough guy. You had to exhibit a sense of
17 bravado. You had to, in other words, talk a big game.
18 Because that is what is respected and expected in that
19 kind of culture.

20 Why am I telling you this?

21 Because you're going to hear evidence,
22 you're going to hear witnesses give testimony of
23 statements that my client made, or allegedly made, which
24 to some of you will -- will sound violent in nature.

25 But what I would submit to you is that all

1 this bravado that he talks, all this tough talk that he
2 talks, all this persona of him being this big shot, was
3 just that.

4 You will hear no evidence whatsoever from a
5 witness that Mr. Lopez Torres stabbed anybody, that he
6 cut anyone, or that he otherwise wounded anyone. You
7 will also have forensic evidence which will show that
8 nothing could be tied to him.

9 The people that did the stabbing, the people
10 that participated in the mutilation, are now the
11 government's witnesses, whereas Mr. Lopez did not
12 participate in that activity.

13 And just to refresh your memory -- because I
14 know the government had a very lengthy opening
15 statement -- Mr. Lopez Torres is only charged with four
16 counts. The first three counts deal with an attempted
17 murder of a guy name Peligroso, which in Spanish means
18 danger, who is an MS-13 member.

19 The last count deals with a murder of
20 Lagrima, which Lagrima in Spanish means teardrop. And
21 I'm assuming you're going to hear evidence that the
22 reason they called him that is because he had a teardrop
23 on his face and, of course, Lagrima was also a very
24 notorious MS-13 gang member.

25 The first three counts, as I mentioned, deal

1 with an attempted murder of Peligroso, or Danger, as he
2 was called.

3 The government told you that Drowsy -- and
4 the way they brought it up was that Drowsy, out of the
5 goodness of his heart, came forward and said that he
6 wanted to go ahead and work as a confidential informant
7 for the police, because he did not want this hit to go
8 down, or this *calentón* or whatever it was, to go down
9 against Peligroso.

10 What the government doesn't tell you, and we
11 expect will come out in the evidence, is that Drowsy is
12 the one that planned that attempted hit. Drowsy is the
13 one who submitted Peligroso's or Danger's name as a
14 person who should be hit. Drowsy is the one who had
15 every motive in the world to make sure that something
16 was done to Peligroso.

17 Why? Because Drowsy suspected that the
18 reason why he was sent to prison for a number of years
19 was because Peligroso was a snitch.

20 And in any of these calls that you will
21 hear, you will not hear Mr. Lopez Torres at all mention
22 that Peligroso should be hit. You do not hear
23 Mr. Lopez Torres at all mention any motive why he thinks
24 they should punish Peligroso at all. It's all Drowsy.
25 And Drowsy held a very high position in MS-13 because of

1 his length of membership in MS-13, but because he also
2 served prison time for a crime, which he suspected
3 Peligroso had snitched or, you're going to hear the
4 word, ratted him out.

5 You're going to hear Drowsy on the phone
6 with other leaders of MS-13. And you'll hear that the
7 way MS-13 is structured, if you're a low-level player in
8 MS-13, you can't voice opposition or objection to
9 something that's being planned. Because if you do,
10 that's viewed as weakness on your part, and then you may
11 have a target on your back, if you say, "You know what,
12 why are we doing this?"

13 And you'll hear these phone conversations
14 where it's Drowsy that's pushing this, Drowsy is pushing
15 it. And some of you will maybe wonder, while this is
16 going on, why would Drowsy do this and then at the same
17 time go to the police and uncover this plot?

18 Because of the benefits that Drowsy's going
19 to receive. And you're going to hear of the benefits
20 that not only Drowsy has been promised, and is
21 receiving, but also the benefits that the other
22 co-defendants in this case have been promised and, I'm
23 assuming, are receiving right now.

24 The last count that Mr. Lopez Torres is
25 charged with is the murder of Lagrima. The government's

1 witness -- and this is a case where the government has
2 really scraped the bottom of the barrel as far as
3 witnesses go.

4 Ms. Martinez mentions Mr. Jose Del Cid,
5 known as Duende, and she says that Duende is no
6 choirboy.

7 Duende is a pathological serial killer.
8 Duende has been involved in two murders in this country,
9 and he will tell you that before the age of 18 he was
10 involved in four or five murders in El Salvador.

11 But Duende is not going to serve life in
12 prison. And you'll hear that Duende may never even face
13 the charges in El Salvador for the murders that he's
14 committed. You'll hear that he's in witness protection,
15 and you'll hear of other benefits that he is receiving.

16 And Duende, if -- and I know Ms. Martinez
17 threw a lot out there to give you kind of a guide of
18 what's going to be presented -- Duende is involved in
19 every single aspect of this case. He's involved during
20 the planning stages of the Peligroso hit. He's involved
21 in the murder of Lagrima. He's involved in the murder
22 of Gerson Martinez. He's involved in the shooting in
23 Chirilagua.

24 But he's got a deal. He's going to walk out
25 of prison. And we'll hear more about what kind of

1 benefit he's going to get. And the government is using
2 him to point the finger at someone who you're not -- who
3 you're going to hear -- or you're not going to hear
4 evidence of -- person who did not stab anyone, did not
5 hit anyone with the machete, did not wound anyone.

6 But the government chooses who they're going
7 to cut deals with, and the government chooses how
8 they're going to present their case, and they decided to
9 cut a deal with Duende.

10 You'll also hear about another co-defendant,
11 Skinny, who the government cut a deal with, who is going
12 to testify. Skinny was involved in the Lagrima murder,
13 and Skinny had an active role in the Lagrima murder.

14 You'll hear that Skinny was involved in the
15 shooting that happened in the Culmore neighborhood.
16 You'll hear that Skinny was a main narcotics guy for
17 this clique, meaning that he sold drugs. He sold
18 weapons.

19 But more shocking and more important about
20 Skinny is that while Skinny is in jail for some other
21 crimes that, again, he's not going to be charged with,
22 because that's the deal that he cut with the government,
23 while he's in jail, you're going to hear that Skinny
24 ordered the hit of Gerson Martinez.

25 And Gerson Martinez is the young man who was

1 decapitated. That hit was given by Skinny because
2 Skinny at the time was the leader of this group. But
3 again, Skinny is going to get a deal.

4 That's just basically a very rough overview
5 of some of these players and what you're going to hear.
6 And the reason why I focused on some of the cooperating
7 co-defendants is because when you assess credibility,
8 you're looking at who you should believe, and you look
9 at the motive to fabricate.

10 And Duende and Skinny combined have so much
11 blood on their hands that they have every motive in the
12 world to cooperate and to fabricate, to exaggerate,
13 because their level of cooperation depends on how much
14 information the government deems valuable. The more
15 valuable your information, the better the deal you get.

16 And specifically referring to Mr. Lopez
17 Torres, again, you'll see or you'll hear that he is the
18 one who didn't do any of that stuff that Duende, Mr. Del
19 Cid or Skinny or other people were involved with.

20 Judge Lee instructed you early on --

21 THE CLERK: Five minutes.

22 MR. LEIVA: Yes.

23 -- to withhold your judgment until the case
24 is done. And, of course, we ask that you do that.

25 And I also ask that you remember the

1 presumption of innocence. That's a word that's so
2 thrown around, I think, that some of us sometimes don't
3 appreciate what that really means.

4 And, our founding fathers were wise to make
5 sure that every person tried in our system enjoyed the
6 presumption of innocence.

7 Why? Because the state has enormous
8 resources. And to hold that someone accused of a crime
9 has to prove their innocence would pit an individual
10 against the vast resources that a government has. So,
11 our founding fathers were wise in that sense.

12 And as we go through this trial, you need to
13 ask yourself -- and, of course, once you get the case
14 submitted to you, you need to ask yourself whether the
15 government has, indeed, proven the case beyond a
16 reasonable doubt against Mr. Lopez Torres.

17 So, once again, ladies and gentlemen of the
18 jury, it's going to be a long trial. There's going to
19 be some pretty graphic evidence that's going to be
20 submitted. But we just ask that, as triers of fact,
21 that you just withhold your judgment until the case is
22 submitted to you.

23 Thank you.

24 THE COURT: Ladies and gentlemen, we have
25 several more opening statements to go through. We're

1 going to break for lunch now for one hour.

2 Please listen to me very carefully. Do not
3 discuss the case. Don't permit the case to be discussed
4 in your presence. Leave your notes in the jury
5 deliberation room.

6 Remember what I said about seeing people on
7 the elevator. They're not going to speak.

8 We will resume at 2:00 o'clock. Thank you.

9 (Jury not present.)

10 THE COURT: Counsel, the Fourth Circuit just
11 ruled on one of the appeals we have. You should all
12 read the opinion. We will talk about it when we come
13 back. Thank you.

14 (Court recessed at 12:59 p.m. and reconvened
15 at 2:07 p.m.)

16 (Jury not present.)

17 THE COURT: Mr. Aquino, do you have a
18 request?

19 MR. AQUINO: We do, Judge.

20 We are having another witness issue. I
21 don't know if the Court remembers, on the October 20th
22 depositions in this case, there was a gentleman that the
23 Court recognized by the name of Luis Rodriguez.

24 THE COURT: Right.

25 MR. AQUINO: And he is not here. And so I

1 would ask the Court to instruct the marshals to find
2 him.

3 I don't have an address to give them. If
4 you remember, the government was the one that subpoenaed
5 him last time, per the Court's order. So, they have an
6 address to give the marshals to direct them to.

7 THE COURT: All right.

8 Can you all do that?

9 MS. MARTINEZ: Your Honor, I can inquire,
10 but I'm not sure that we have a valid address for him.
11 And we have not been in touch with him since that
12 deposition, Your Honor.

13 THE COURT: Okay.

14 Well, my plan would be to issue a rule to
15 show cause and to ask the U.S. Marshals to serve him,
16 and ask the government to see if you have any
17 identification address for him.

18 MS. MARTINEZ: Yes. If we have anything, we
19 will certainly pass it on.

20 THE COURT: And let Mr. Aquino -- let me
21 know as well.

22 There are two observations I want to make.
23 One has to do with screening.

24 I made a judgment to screen everybody that
25 comes in and out of the courtroom. And when I say

1 everybody, that means law clerks, that means jurors, and
2 that means all the parties and the lawyers in the case.

3 The only exception that would be, that there
4 are, I think, two law enforcement officers who have been
5 screened downstairs, and no weapons are in the
6 courtroom, and so I'm not making them go through the
7 second screening. But everybody else is going to be
8 screened. That's just the way it's going to be. Given
9 what taken place at the Capitol yesterday, I'm just not
10 taking any chances. This is the world we live in now.

11 The second thing is, I understand that I
12 should offer every juror a headset, and I will do that,
13 to see if anybody wants to take it.

14 Is there anything else I need to take up
15 before I bring the jury out?

16 MR. ZIMMERMAN: Two things, Your Honor. One
17 was, the Court had asked us to consider the Fourth
18 Circuit's ruling.

19 THE COURT: It really only applied to
20 Mr. Salvato's and Mr. Amolsch's client. It doesn't
21 apply to everybody else. It has to do with a juvenile
22 appeal. But it's been -- the opinion is -- is unsealed.
23 It's published. We're happy to give you a copy. It has
24 nothing to do with your clients.

25 MR. ZIMMERMAN: If I might?

1 THE COURT: Sure.

2 MR. ZIMMERMAN: I think it was just
3 unsealed, Your Honor, so I haven't had a chance to read
4 it, but I'm familiar with the substance and the long
5 fight. And I appreciate that, Judge.

6 THE COURT: Let him have it.

7 MR. ZIMMERMAN: You know, in the pleading
8 practice -- and there was significant pleading practice
9 in this -- and the ruling to refer to Cerritos and Cerna
10 as Homeboy One and Homeboy Two with respect to Count 4,
11 my concern based on this ruling and based on the
12 government's opening today, is that the joinder of us in
13 this trial is Count 5 is unfairly prejudicial.

14 So, what I'm doing is I'm moving the Court
15 to sever our client and Count 5 -- Count 5 is the
16 reburial of Lagrima -- from this trial.

17 My concern is that the two murders and
18 burials in the same park, Lagrima and Gerson, are so
19 closely related and, in fact, were sort of closely tied
20 together and somewhat conflated in the government's
21 opening, that there's a risk of confusing that our
22 client, who is not charged in the Count 4 murder -- he
23 is charged in the reburial -- could nonetheless be
24 prejudiced by the misperception that he was present at
25 the murder.

1 THE COURT: Mr. Zimmerman, do you recall I
2 had motions scheduled in this case?

3 MR. ZIMMERMAN: I do, Your Honor.

4 THE COURT: And, the motions are now over.
5 You do realize that, don't you?

6 MR. ZIMMERMAN: I do that, Your Honor.

7 But --

8 THE COURT: So this is not new information
9 to you, is it, what the charges are for your client?

10 MR. ZIMMERMAN: Well, the two things that
11 are new that have happened today is that we have this
12 Fourth Circuit ruling, and --

13 THE COURT: That has nothing to do with your
14 client.

15 MR. ZIMMERMAN: Well, it does in the sense
16 that -- and we have the ruling by the Court of Homeboy
17 One and Homeboy Two, so we have the dismissal against
18 Cerritos.

19 My concern is that -- is that my client --
20 he could be smeared, if somewhat implicated, in Count 4.
21 And so, for example, if we ask the witnesses testifying
22 about Count 4, "Was my client there? Was Mr. Gaitan
23 Benitez there," would that contravene the Court's orders
24 in any sense or spirit?

25 Because, by process of elimination, those of

1 us who are not Cerritos and Cerna could ask each
2 witness, "Well, my client wasn't there. My client is
3 not Homeboy One and Homeboy Two."

4 THE COURT: Are you asking me for advice
5 about what to ask --

6 MR. ZIMMERMAN: I'm asking if the Court
7 would see that as a violation of its order.

8 THE COURT: It doesn't seem to be to me.

9 Does the government think -- I don't think
10 it is. There are several individuals who are not before
11 the Court who were charged, so I don't think that that
12 necessarily points to any particular individual in the
13 courtroom.

14 MR. ZIMMERMAN: Okay, Your Honor. I
15 guess -- I guess for the record, our concern is that --

16 THE COURT: Wait a minute. Ms. Martinez
17 wants to say something.

18 MS. MARTINEZ: Your Honor, I just want to
19 add that in addition to individuals who were charged in
20 the indictment, within the murder of Lagrima, Count 4,
21 there was at least one additional individual there who
22 wasn't charged in this indictment and isn't going to be
23 present in this case, but will be spoken about. His
24 nickname is Lil Evil.

25 There will be testimony about other people

1 involved in this. And so I don't think that saying
2 Homeboy One or Homeboy Two, or adding from Mr. Zimmerman
3 that Homeboy One and Homeboy Two aren't Pesadilla, is
4 going to imply that Homeboy One or Homeboy Two are any
5 of these individuals sitting here.

6 So, I don't -- I don't see that Your Honor's
7 orders or the Fourth Circuit in any way affects
8 Mr. Zimmerman's client, Mr. Gaitan Benitez, nor is there
9 any grounds whatsoever to sever.

10 Count 5 is an entirely separate count. It's
11 about the reburial, the digging up of a body and
12 reburying in a different location. It's separate from
13 the murder. It happened on an entirely separate day.
14 And all of the government's evidence will establish
15 that.

16 THE COURT: All right.

17 MR. ZIMMERMAN: Your Honor, I guess I would
18 just add, with regard to that redaction, a concern -- I
19 mean, one way to make it cleaner and -- would be to call
20 them Person One and Person Two. That would be both
21 gender neutral. And I know there's some case law, I
22 think it's *United States versus Gray* --

23 THE COURT: Mr. Zimmerman, motions are over.
24 I told you all before, we're in trial. I'm in trial.
25 I'm not going to have the jury sitting while we're doing

1 motions. I gave you all motions days. I gave you lots
2 of time.

3 Let's bring the jury out.

4 Have a seat. We're done.

5 I'm sorry. Yes?

6 MR. CRAWLEY: One question. Dwight Crawley.

7 THE COURT: Yes, Mr. Crawley.

8 MR. CRAWLEY: I just want to know, is the
9 Court ordering a running transcript, such that we can
10 have the transcripts produced daily.

11 THE COURT: Oh, absolutely not. No, I don't
12 have any -- I just have a screen. I don't have any
13 transcripts. No, I don't have a daily copy for you.

14 MR. CRAWLEY: Okay. Your Honor, our concern
15 on behalf of Mr. Cerritos is the issue we raised earlier
16 today.

17 We would like to get a copy of the
18 transcript as relates to what was said specifically
19 about our client in Count 4 as quickly as possible,
20 because we would like to potentially brief that issue.

21 We can do it tonight, Your Honor. But I
22 know that's --

23 THE COURT: I'm not going to have any
24 emergency transcript done. You were here. I was here.
25 I've admitted what I did. If you have another motion to

1 file, please file it. But I'm not going to do it during
2 trial.

3 If you want to have a motions hearing on
4 Fridays, go ahead. But I've given you all this time to
5 file motions. I'm ready to try the case now.

6 So, your request is -- if you want to file a
7 motion for a transcript, go ahead. If you want to file
8 a motion about the mistrial again, go ahead, and I'll
9 hear it on a Friday. But I'm not going to do it right
10 now at trial.

11 Thank you very much for your patience.

12 MR. ZIMMERMAN: The only other issue, the
13 second issue, Judge, briefly, is that my client believes
14 he saw Junior in the courtroom during the government's
15 opening. And I wonder if there is any --

16 THE COURT: Well, did you see him?

17 MR. ZIMMERMAN: I wouldn't be able to
18 recognize Junior. And, I mean, the gallery has a number
19 of people --

20 THE COURT: I don't know who Junior is.

21 MR. ZIMMERMAN: The government's witness.

22 THE COURT: Was there a request for rule on
23 witnesses in the case made?

24 MR. ZIMMERMAN: I believe there was.

25 THE COURT: I didn't hear one. Is there one

1 now, a request for rule on witnesses?

2 I never heard one. Did you hear one? I
3 didn't hear one.

4 MR. ZIMMERMAN: I believe there was. We are
5 certainly making it now.

6 THE COURT: Oh, you're making it now.

7 MR. ZIMMERMAN: I believe there was.

8 THE COURT: Mr. Amolsch, I didn't hear one
9 at the beginning of the trial. Did you?

10 MR. AMOLSCH: I believe you issued a rule on
11 witnesses a few days ago. I believe --

12 THE COURT: During jury selection?

13 All right. Are there any witnesses in the
14 courtroom? I don't --

15 Are there any witnesses in the courtroom,
16 Ms. Martinez?

17 MS. MARTINEZ: No, I don't think so.

18 Your Honor, you did put the rule on
19 witnesses in place.

20 THE COURT: Okay.

21 MS. MARTINEZ: And I can attest that, no,
22 the government's witnesses are not present in the
23 courtroom.

24 THE COURT: Okay.

25 Anything else?

1 MR. ZIMMERMAN: Is the government's
2 representation that they weren't present during opening,
3 or they're not present now?

4 THE COURT: There are no witnesses were
5 present in the courtroom, is what she said. You want to
6 ask her again? Ask her again. Go ahead.

7 MR. ZIMMERMAN: Well, the question is
8 whether or not Junior was here during her opening
9 statement, not whether there's any government witness
10 here now. That's my question. Because that's what my
11 client believes he saw.

12 THE COURT: Okay.

13 Ms. Martinez, was any government witness in
14 the courtroom during opening statement?

15 MS. MARTINEZ: To my knowledge, no
16 government witness was here during the opening
17 statement, with the exception of one of the law
18 enforcement agents who are sitting at the counsel table
19 with Your Honor's permission.

20 And, to my knowledge and to our law
21 enforcement officers' knowledge -- I just checked with
22 them -- the individual who Mr. Zimmerman is referring to
23 as Junior was not present in this courtroom during any
24 part of these proceedings, including opening statement.

25 THE COURT: Thank you.

1 MR. ZIMMERMAN: Thank you, Your Honor.

2 THE COURT: You can bring our jury out,
3 Mr. Toliver. Thank you.

4 (Jury present.)

5 THE COURT: You may be seated.

6 Counsel for Alvin Gaitan Benitez, you may
7 proceed.

8 OPENING STATEMENT BY DEFENDANT GAITAN BENITEZ

9 MS. AUSTIN: Your Honor, counsel for the
10 government.

11 Good afternoon, ladies and gentlemen. As
12 I've stated before many times now, my name is Amy
13 Austin, and together with Jeff Zimmerman we represent
14 Alvin Gaitan Benitez.

15 THE COURT: Ms. Austin, let me just offer --
16 my court reporter is wearing a headset. If anyone is
17 having trouble, we have headset we can all use. Would
18 anyone would like to have one?

19 No?

20 Yes, two. Okay. Just a second. I have a
21 little speaker up here for me to hear it, so, a headset
22 is great.

23 Sorry, Ms. Austin.

24 (Pause).

25 THE COURT: They don't work? None of them

1 work?

2 I'm asking, do any of them work?

3 Everybody's okay? All right.

4 Counsel, you may proceed.

5 MS. AUSTIN: Thank you, Your Honor.

6 By now you know that this case involves
7 allegations of a very serious nature. The government
8 has alleged that heinous crimes have been committed:
9 murders, burying of bodies, and other violent gang
10 activity.

11 But I implore you, do not let the nature of
12 the allegations cause you to presume anything about my
13 client, Mr. Gaitan Benitez. Instead, listen to the
14 evidence; not the allegations, but the evidence.

15 And what the government is going to present
16 to you by way of evidence consists of testimony by
17 witnesses that they have referred to as murderers.
18 They're government witnesses. Some of them are paid
19 government witnesses.

20 Some of them have received thousands of
21 dollars, and continue to receive that kind of money to
22 come into court and testify on behalf of the government.

23 Their motivation is self-preservation.
24 They've all committed crimes and they're all testifying
25 in an effort to escape punishment. So, listen to their

1 testimony and weigh it against the motivation they have.

2 Now, the government has charged Mr. Gaitan
3 Benitez with just two crimes, Count 5 and Count 6. And
4 the government outlined in detail for you, Count 5 is
5 alleged to have occurred in October of 2013.

6 And the government went down the list of
7 people who were in charge of the PVLS clique during that
8 period of time. Mr. Gaitan Benitez was not mentioned.

9 And the government outlined in detail for
10 you who was in charge of the PVLS clique in March of
11 2014. Mr. Gaitan Benitez was not mentioned.

12 Let's go through some of the witnesses that
13 the government is going to present. One of them is
14 named Junior. The government has already referred to
15 him. He's been testifying now for a number of years,
16 cooperating with the government, being allowed to stay
17 here in this country as long as he continues to
18 cooperate with the government. He's paid sums of money
19 to come in here and testify.

20 But, what's more important than those
21 factors is that he does not have first-hand knowledge of
22 anything that happened in this case. All he knows is
23 what people have told him and what -- the conversations
24 he had on the telephone with members of the gang.

25 My client is on the phone with Junior one

1 time. And the government has already described to you
2 gang culture, that it involves a lot of bragging. It
3 involves a lot of blustering, trying to promote
4 yourself, increase your reputation in the gang.

5 And consider the one phone call that
6 Mr. Gaitan Benitez is on. It falls right in line with
7 gang culture of blustering and bolstering and false
8 bravado.

9 Now let's talk about another witness, Jose
10 Del Cid, also known as Duende. He is certainly a
11 murderer. He was involved in two of the murders in this
12 case. He was involved in other murders not charged in
13 this case. He has his hand in almost every crime
14 alleged in this indictment.

15 And when it looked like his future was
16 pretty grim, he decided that he was going to testify for
17 the government. All of a sudden a person who spent a
18 lifetime killing is now a star witness for the
19 government, and is here because he does not want to
20 spend the rest of his life behind razor wire.

21 Another witness, known as Buso, will be
22 brought in here by the government to testify. Buso
23 knows nothing about this case, does not know who
24 Mr. Gaitan Benitez is; but he was involved in a murder
25 back in 2005, was prosecuted, and received a life

1 sentence.

2 But because he has begun to cooperate with
3 the government and appear as a witness in cases, he is
4 now serving a 15-year sentence. He has around four
5 years before he's released. But he's still paying off
6 his debt to the government, so his motivation for coming
7 in here and testifying is self-preservation.

8 And, I also submit to you that he's also
9 being brought in here for effect. Once you see him,
10 you'll understand what I'm saying. But don't let his
11 appearance sway you in your weighing of the evidence
12 that the government presents in this case.

13 Some key evidence to look for with regard to
14 Mr. Gaitan Benitez and the charges against him -- again,
15 as I stated, the government has outlined who the people
16 were in charge, who was calling the shots. And
17 Mr. Gaitan Benitez is not mentioned during the periods
18 of time for the crimes that he's charged with.

19 After the murder of Gerson in March 2014,
20 many individuals who were involved in that crime fled
21 the State of Virginia. Mr. Gaitan Benitez did not go
22 anywhere.

23 You're going to hear inconsistent testimony.
24 You're going to hear many people on the telephone, in
25 conversations, taking responsibility for some of the

1 crimes alleged in this case; the witnesses coming in
2 here giving their version of what happened in each of
3 the different crimes in this case.

4 The government's burden is to prove to you
5 beyond a reasonable doubt that my client committed the
6 very serious charges contained in Count 5 and Count 6.

7 Inconsistent testimony, lack of direct
8 evidence, lack of physical evidence, and testimony from
9 witnesses who are doing nothing but saving themselves
10 does not amount to proof beyond a reasonable doubt.

11 As jurors in this case, I'm sure you suspect
12 by now that this is not going to be easy. The jury
13 selection process was very long and involved. The trial
14 is going to be long. The evidence, the photographs, the
15 testimony is going to be difficult to hear at times, and
16 very difficult to see at times.

17 But, please, once the dust has settled, once
18 you're able to digest the evidence and get past the
19 natural emotional response you're going to have to a lot
20 of evidence that you see, consider whether the
21 government has proven its case of Count 5 and Count 6
22 against Mr. Gaitan Benitez.

23 And I submit to you that the evidence will
24 fall woefully short of showing that he's guilty and, in
25 fact, it will show that he was not involved in these

1 crimes, and you will return a verdict of not guilty.

2 Thank you.

3 THE COURT: Counsel for Christian Lemus
4 Cerna.

5 MR. AMOLSCH: May I move the podium a little
6 bit, Judge?

7 I'm sorry. May I move the podium?

8 THE COURT: I don't think it moves.

9 MR. AMOLSCH: It rolls a little bit.

10 THE COURT: Okay. You can angle it, sure.

11 MR. AMOLSCH: To make it easier for
12 everybody.

13 THE COURT: All right.

14 OPENING STATEMENT BY DEFENDANT LEMUS CERNA

15 MR. AMOLSCH: Good afternoon, ladies and
16 gentlemen. My name is Christopher Amolsch and I
17 represent Mr. Cerna, who is right there --

18 Please stand.

19 -- in the back row, along with my
20 co-counsel, Mr. Salvato.

21 Mr. Cerna is charged in only one count of
22 this indictment. He's charged in Count 6, which, as the
23 government told you, is murder in aid of racketeering of
24 Gerson Aguilar.

25 The judge read you some preliminary

1 instructions about what the government has to show and
2 the elements involved, and I'm going to read to you from
3 that instruction.

4 The judge read to you that on or about
5 March 29th, 2014 for the purpose of gaining entrance,
6 maintaining, increasing position in MS-13, that my
7 client murdered or aided and abetted in the murder of
8 Gerson Aguilar.

9 Now, there's two parts to that. They don't
10 just have to prove to you beyond a reasonable doubt that
11 Mr. Cerna murdered or aided and abetted in the murder of
12 Gerson Aguilar. They have to show you that he did it
13 for a particular purpose, murder in aid of racketeering,
14 which again is gain entrance, maintain position,
15 increase position.

16 I want to talk about this last part first,
17 as it relates to Mr. Aguilar's murder, because not every
18 murder is a federal murder.

19 The government has already told you, and
20 will allege, that my client, Mr. Cerna, was allegedly a
21 member of MS-13 at the time of Mr. Aguilar's death.

22 He did not -- the evidence will show he did
23 not gain entrance by murdering anybody, but that he was
24 beaten into -- I believe the government's evidence will
25 show this -- back in 2012, 2013, along those lines.

1 Now, the evidence will show that the purpose
2 and the reason for Mr. Aguilar's murder was not to
3 maintain, increase his position within the gang.

4 The reason that he was murdered, as the
5 government alluded to, is the oldest reason in the book.
6 It's because Mr. Aguilar made the mistake of sleeping
7 with the wrong woman.

8 The evidence will show that Mr. Aguilar was
9 associated with MS-13. I believe the government said
10 they will show you that he was a *chequeo*, somebody who
11 was associated the group but not a full-on member yet;
12 and that his day-to-day duty, I believe the government
13 said or the evidence will show, was selling drugs, that
14 that's what he did.

15 The evidence will also show that he was
16 pretty bad as this, that he would lose the money, that
17 he would take the drugs that he was supposed to be
18 selling and he would use them, and as a result he would
19 be punished for this.

20 Now, the government mentioned a little -- or
21 the government will mention, I believe, evidence
22 relating to another alleged member of the group, Lil
23 Evil. Lil Evil had the same issue. He would lose the
24 money, or the evidence will show he would smoke up the
25 marijuana that he was supposed to be selling; and that

1 he would be punished, he would be corrected, for doing
2 this. And the punish was generally a beating, as the
3 government said, a *calentón*, for 13 seconds.

4 Now, the evidence will also show you that at
5 some point Aguilar came into contact with a woman named
6 Belen. Her name is B-e-l-e-n. I think it's Belen,
7 Belen, I'm not sure how it's pronounced. She's the
8 girlfriend -- or was the girlfriend of one of the
9 government's witnesses, Skinny, Ayala Marquez.

10 Now, Mr. Aguilar not only got to know Belen,
11 but he eventually started using drugs with her. And
12 Skinny found out about this, came home one day found
13 them locked in the bathroom together. Belen wouldn't
14 open up the door. Skinny finally managed to get in and
15 saw Mr. Aguilar running out the window. He had just
16 escaped.

17 And this agitated and necessarily made
18 Skinny angry, and he asked that Mr. Aguilar be punished.
19 But for whatever reason, he wasn't.

20 Things settled down, and at some point
21 Skinny goes to jail. I believe it was for selling
22 drugs, but he's in jail. And while he's in jail, it's
23 decided that Aguilar will move in with Belen and look
24 out for her while Skinny is locked up, because he can no
25 longer take care of her.

1 And the evidence will show that before
2 Skinny goes in, he gives Belen money to pay the rent.
3 Takes his personal funds and says, "While I'm gone, here
4 is money for you to live on while I'm gone."

5 And the evidence will show that Aguilar did
6 two things: that he took that money and used it to buy
7 drugs and smoke it with Belen, and that he started
8 sleeping with her.

9 Now when Skinny found out about this,
10 understandably, he took it very personally. And he made
11 a phone call from the jail, which the government alluded
12 to, and he called, I believe the evidence will show,
13 Omar Castillo.

14 And I believe the government will play that
15 tape for you. And in that conversation you will hear a
16 lot of talk about how Skinny is angry, but there is
17 no -- there should not be any discussion about gang
18 activity, but he is mad that Aguilar is sleeping with
19 his girlfriend while he's locked up.

20 So, he does what guys do. He calls his
21 buddies, because he's going to solve it. Now his
22 buddies are in the gang. So, that's who he calls. So,
23 he calls Mr. Castillo.

24 Now when he calls Mr. Castillo, Mr. Castillo
25 happens to be with another one of the government's star

1 witnesses, Jose Del Cid, who you will hear lots about.
2 Jose Del Cid was with Mr. Castillo when he got the phone
3 call from Skinny at the Fairfax jail, and he hears
4 Skinny talk about how mad he is at Aguilar, and that his
5 boys need to punish him and beat him for sleeping with
6 the wrong woman.

7 But you will not hear anything in that phone
8 call relating to the fact that Aguilar needs to be
9 killed for this. This is not a green light situation.
10 This is, you're sleeping with the wrong woman.

11 And the government appears to agree
12 from (sic) this, because from the evidence it appears
13 that Skinny has not been charged with Aguilar's murder,
14 like not now, not ever. It appears the only thing he
15 was charged with was another murder in this case, but
16 not this one.

17 So, in September of 2014, Mr. Del Cid is
18 interviewed by Detective Ignacio from the Alexandria
19 Police Department, and he's interviewed by a great
20 number -- about a number of things, because he's a
21 really bad guy.

22 In the conversation, they talk about
23 Aguilar's murder. And during this interview, he says to
24 Detective Ignacio that the plan was never to kill
25 Skinny -- Aguilar; the plan was to beat him. That was

1 the plan.

2 And he said this before he was facing
3 anything approaching the penalties he is facing here
4 now. This is a conversation with Ignacio before he was
5 ever charged in Federal Court, before he ever pleaded
6 guilty to two counts of murder. This is what he said
7 happened.

8 And he did say -- did agree that Aguilar
9 ending up getting killed. And he talked about how that
10 happened. But he never said anything about Mr. Cerna
11 stabbing him or executing any of the blows that led to
12 his death.

13 Now, Del Cid is what's known as an old head,
14 meaning, as the government told you, he has been around
15 forever. He started in El Salvador, where I believe the
16 government will say the evidence will show that he like
17 dismembered a kid when he was like 12 years old. And
18 this is a guy who has been in the gang for a long time.

19 And one of the government's -- one of the
20 instructions the government -- the judge read to you is,
21 again, the merely associating with others, discussing
22 common goals, mere similarity of conduct between and
23 among such persons, merely being present at a place
24 where a crime takes place or is discussed, or even
25 knowing about criminal conduct, in and of itself, does

1 not make someone a member of a conspiracy, does not make
2 them guilty.

3 As the evidence will show -- the government
4 will put into evidence a plea agreement between
5 Mr. Del Cid and the government, in which Mr. Del Cid has
6 pleaded guilty to two counts of murder, and that he is
7 facing two life sentences for that.

8 In addition to that, the government will
9 introduce evidence of what's called a statement of
10 facts. A statement of facts is an agreed-upon factual
11 basis for the plea. It's what the government agreed
12 happened and what Mr. Del Cid agreed happened as it
13 relates to the crimes for which he pleaded guilty.

14 Now, in this plea agreement -- in this
15 statement of facts, Mr. Del Cid and the government agree
16 that Aguilar did, in fact, get decapitated, but that it
17 happened after Aguilar was already dead. That's what
18 the statement of facts says. Mr. Aguilar was killed,
19 and after he was dead he was then decapitated.

20 So, any evidence you may hear about
21 Mr. Cerna allegedly taking off somebody's head, you will
22 know that everybody agrees that Mr. Aguilar was already
23 dead when that happened, and Mr. -- and that
24 decapitation did not cause Mr. Aguilar's death.

25 The government has described Mr. Del Cid as

1 a cooperating witness, meaning he's here. He signed an
2 agreement to cooperate with the government.

3 They didn't tell you what Mr. Del Cid is
4 expecting from them. The other side of that, which
5 Ms. Austin alluded to, is he is expecting to be rewarded
6 at the end of the day for this. This is not for free.

7 As you will see, this is one of the worst
8 human beings you're ever going to meet. And he's not
9 here because he's good person. He's here because he has
10 an expectation. And he understands that the only way he
11 can not spend the rest of his life in prison is if the
12 government files a motion saying he has substantially
13 cooperated with them, and that he should go home early.
14 That's it. That's his only out.

15 Because he is a cooperating witness, the
16 judge will also give you another instruction regarding
17 how it is you judge the credibility of cooperating
18 witnesses.

19 The government told you how important your
20 job is, judging the credibility of witnesses. When
21 Mr. Del Cid, Slow, Skinny -- these are all people who
22 are cooperating witnesses, and the judge will tell you
23 that when judging their credibility, their credibility
24 must always be examined and weighed with greater care
25 and caution than the testimony of ordinary witnesses.

1 The law recognizes that these witnesses are different,
2 and you are to judge their credibility with greater care
3 and caution than you would with anybody else up there
4 testifying.

5 So, keep that in mind when you're judging
6 the credibility of the government's witnesses,
7 especially those testifying pursuant to cooperation
8 agreements and those who have testified and pleaded
9 guilty to murder.

10 Now, Mr. Del Cid has given many different
11 statements to the government as part of their
12 investigation. You will hear about that. So, I don't
13 know what he's going to say when he gets up on the
14 stand. Maybe he'll say the plan was to kill Aguilar the
15 whole time. Maybe he'll say everybody knew about it
16 beforehand. Maybe he'll say there were way more people
17 involved than he said before.

18 But, remember, before he had any of this
19 hanging over his head, before he had two life sentences,
20 he told Detective Ignacio the plan was to beat Aguilar
21 up. And the government and Del Cid have already agreed
22 that Mr. Aguilar was dead by the time his head was
23 allegedly taken off.

24 This is all you can tell from Del Cid.
25 That's it. That's the credibility.

1 And this makes sense, given how you will
2 hear the experts talk about how MS-13 operates. I
3 expect that you will hear experts from the government
4 talk to you about how the operation is set up. And
5 these are professional witnesses.

6 Mr. Buso -- another gentleman named
7 Detective Saa, who will tell you that they are -- they
8 are experts in MS-13, and how this whole thing works,
9 and they will tell you that it's regimented, and that
10 there are rules. And among the most important rules, as
11 the government told you, are the rules related to green
12 lights. How is it that a hit is taken out on somebody?

13 And their testimony, if it's consistent with
14 what it was before, will be that there is three real
15 reasons that you get green-lighted: for cooperating
16 with the government, for snitching on a fellow gang
17 member, and trying to leave the gang without permission.
18 Because once you're in the gang, you are in the gang.

19 The green light allegedly on Peligroso was
20 because he decided to leave without permission. That's
21 why he was green-lighted.

22 And the green light, the evidence will show,
23 was approved by local leadership here. It was approved
24 by Payaso, I believe, but it was also approved by a guy
25 named Big Poison in El Salvador, and a guy named Tigre

1 in El Salvador. This was run up the chain before they
2 decided to issue a green light.

3 Now, none of those things are present with
4 Aguilar. There is no evidence that Aguilar was
5 snitching. There is no evidence that he was leaving the
6 gang. There is no evidence that any of this was
7 sanctioned by MS-13 leadership.

8 The evidence will show that this was not at
9 all murder in aid of racketeering, that this was a
10 personal beef that got out of hand because the guy was
11 sleeping with the wrong woman. And that's not murder in
12 aid of racketeering.

13 You may also hear that in some instances,
14 local leadership can, on occasion, approve a green light
15 without the approval of the higher-ups. I believe they
16 talked about the first word and the second word. And
17 you can actually get some approval in certain instances.

18 One of the other government's witnesses will
19 be Villanueva, Lil Slow. He was a member of the clique
20 at the time of Aguilar's murder. He pleaded guilty to
21 murder.

22 And when he was arrested for that murder, he
23 spent some time locked up, and he spent some time locked
24 up with a man named Romero Cruz, who was Payaso.

25 The government acknowledges and agrees that

1 Payaso was the East Coast leader of MS-13, and that he
2 was part of local leadership, as they told you, here in
3 the area.

4 And Mr. Slow should testify that when he was
5 locked up with Romero Cruz, that they discussed the
6 green light on Peligroso and how that worked, and how he
7 received the permission from Poison and El Tigre.

8 But that Romero Cruz will tell you that no
9 one, no one, asked him about the green light for
10 Aguilar, and that he, Romero Cruz, would not have
11 approved this, because it's against the rules of the
12 gang.

13 So while the evidence will show, I believe,
14 that Aguilar was, in fact, murdered, and that members of
15 MS-13 were present when this happened, the evidence will
16 also show that the dispute that led to his death was not
17 sanctioned by MS-13; it was personal, not gang related,
18 and that the plan was to beat him up, not kill him.

19 Now, let's talk about who actually killed
20 Aguilar. In addition to showing that it was a murder in
21 aid of racketeering, they've got to show you that
22 Mr. Cerna either committed the murder or aided and
23 abetted in the commission of the murder.

24 And here, the government's evidence is all
25 over the place. You will hear, I expect, from somebody

1 named Hector, either because the government calls him as
2 a witness or because we do.

3 Hector was a *paro* for MS-13. You heard that
4 term, earlier, somebody not in the gang, but who helps
5 out. Hector, the evidence will show, drove various
6 members of this clique to a park or a community center
7 on the night of Aguilar's murder; and that afterwards,
8 about two hours later, he came back to pick everybody
9 up, or at least some of the people up.

10 Hector, as far as I know, has not been
11 charged in any crime as has been related to this.

12 Now, when Hector dropped everyone off, he
13 saw many people walk into the woods, some of which he
14 knew, some of which he didn't, some of which are charged
15 in this case and some of which are not.

16 When he came back to pick people up, several
17 people got into his car, including Mr. Cerna and others.
18 And at the time, when Mr. Cerna got in, he sat in the
19 passenger seat -- according to him, Mr. Cerna sat in the
20 passenger seat next to Hector, who was driving. And
21 Hector noticed that some people, when he picked up,
22 were, in fact, covered with blood, but not Mr. Cerna.
23 There was no blood on him anywhere, according to Hector.

24 Hector was also present a few days later in
25 an apartment with Mr. Cerna and others, discussing the

1 Aguilar situation. And while he was there, he heard at
2 least one person claim responsibility for Aguilar,
3 saying, "I killed him once, and if I see him I'll kill
4 him again." And again, that person was not Mr. Cerna.

5 Hector should also tell you that Big Poison
6 in El Salvador has approval over everything in Virginia,
7 and that Belen may have actually slept with somebody
8 else in the gang, but they didn't kill him.

9 Del Cid will probably be asked to testify
10 about the manner of Aguilar's death, because he seems to
11 be present every time someone gets kill. But the
12 evidence will show there were many people present at
13 Aguilar's murder, not just him.

14 The attack took place at midnight or around
15 thereabouts, dark, in the middle of a park, in the back,
16 very little lighting; and that while Mr. Cerna may have
17 helped remove his head, he only did so after he was
18 dead.

19 Lil Slow will testify about the manner of
20 Aguilar's death as well, because he was present. As I
21 said, Mr. Villanueva is also facing a mandatory life
22 sentence, and so his testimony should be equally
23 suspect, because he is testifying in agreement with a
24 cooperation as well.

25 It appears that he has not even -- he has

1 already been rewarded to a certain degree, because the
2 government has not even charged him with the Trujillo
3 murder, even though you heard that he was present there.
4 So it appears he has already escaped one life sentence
5 already, just by coming here and agreeing to talk to
6 you.

7 So, I don't know what he's going to say,
8 either. Maybe he's going to say Mr. Cerna was
9 completely involved in it, and he was hacking and
10 slashing and doing all this bad stuff.

11 But when you listen to that, I want you to
12 remember what Hector should tell you, which is that when
13 he got back to the car and Mr. Cerna sat right down next
14 to him, there was no blood on him anywhere.

15 And the government told you a little bit
16 about Junior, Jose Roberto Aparicio Garcia, goes by
17 Junior. Junior is a paid informant. And according to
18 the government, he has been a paid informant for the
19 government for about ten years, having received
20 approximately \$43,000 in fees, some expenses, some
21 earnings, and an additional \$6,000 owed to deal with his
22 family.

23 But, as Ms. Austin alluded to -- or maybe
24 one of my other co-counsel alluded to -- he gets far
25 more than money. Mr. -- Junior has no status in this

1 country. The only status he has is the one that the
2 government gives him.

3 He has what's called an S visa. That means
4 he gets to stay only as long as he assists law
5 enforcement, and only as long as law enforcement asks
6 that he stay. And this is a revolving one-year visa.
7 It's not forever. He has to continue to produce if he
8 wants to stay here.

9 And you will see that Junior is a
10 professional liar at this point. You heard Mr. Leiva
11 talk to you about what he expects the government's
12 experts to tell you about the braggadocio nature of
13 MS-13. And Junior has been doing this for ten years,
14 and Junior lies to everybody he talks to on these tapes.
15 And as a result, people lie back to him.

16 He talks about all the murders he's done,
17 the places he's been, the women he's been with, the
18 things that he has done. And people respond, "Yeah,
19 I've done that, too. I did this. I'm as bad as you
20 are."

21 It's a conversation going back and forth.
22 It's a conversation between MS-13 members about who is
23 the badest guy in the room, and none of it, as far as I
24 can tell, or almost none of it, is corroborated at all.
25 It's just guys talking, whether it's guys talking about

1 women or fish they've caught or whatever, when someone
2 brags, you brag back. So you're going to get a lot of
3 that on the tape.

4 And as Ms. Austin said, he was there for
5 none of this. He -- all he knows is what people have
6 told him.

7 And this is especially true for people like
8 Mr. Cerna, who is young. He is 18 years old.
9 Mr. Rivera -- sorry -- Junior is 30. He's a guy who's
10 been around almost twice as long as Mr. Cerna has been
11 on this planet, and he understands how this is played,
12 and he gets Mr. Cerna and others to say things, in the
13 context of bragging about MS-13, that are difficult to
14 listen to; but that doesn't mean they're in any remote
15 way true.

16 So, that's really it. At the end of the
17 day, as the judge said, they have to prove two things
18 beyond a reasonable doubt: that this was really a
19 murder in aid of racketeering, and not a personal beef;
20 and that Mr. Cerna, who had no blood on him at all, took
21 part in this murder.

22 Del Cid will tell you it was never murder,
23 and he will tell you that Aguilar was already dead when,
24 as the government said, Mr. Cerna said he chopped that
25 fucker's head off.

1 The evidence doesn't support the charges
2 against Mr. Cerna. I'm asking you to find him not
3 guilty of the only count he's charged in, which is
4 Count 6. At the end of the day, the government's
5 evidence simply doesn't match.

6 Thank you.

7 THE COURT: Good afternoon, counsel for Omar
8 DeJesus Castillo.

9 You may proceed.

10 MS. MARTELL: Thank you, Your Honor.

11 OPENING STATEMENT BY DEFENDANT DeJesus CASTILLO

12 MS. MARTELL: May it please the Court, my
13 fellow attorneys, government counsel.

14 Ladies and gentlemen of the jury, first of
15 all, good afternoon. I'd like to start off by
16 introducing myself. My name is Katherine Martell. And
17 together with my co-counsel in this case, Meredith
18 Ralls, we represent Omar DeJesus Castillo.

19 I'm not sure if everybody can see him from
20 where he is, so I'm going to actually show him -- a
21 picture of him that I took in the courtroom yesterday.

22 Ladies and gentlemen, I want to first start
23 off by thanking you all for being here today. I know
24 that it took a process to get you here and to get you
25 seated on this jury. And the reason for that is, is

1 that your service ensures that all of our rights are
2 upheld and that they remain intact.

3 You, ladies and gentlemen, are entrusted
4 with the power to decide this case. And that's a very
5 important honor, because you are going to determine
6 whether justice is served.

7 Ms. Martinez touched on that, and I believe
8 in that. But, ladies and gentlemen, justice will only
9 be served if the government proves this case beyond a
10 reasonable doubt against my client, Omar Castillo.

11 In this open, while I'm speaking to you, and
12 at every single point in this trial, I'm going to talk
13 to you about one person only, and that's Omar Castillo.

14 There's a lot of evidence in this case.
15 We're going to be here for a long time and we're going
16 to listen to a lot of witnesses. And, I want you to
17 listen carefully to everything that's said, because a
18 lot of it is not going to involve my client. A lot of
19 what you hear will have nothing to do with Omar
20 Castillo.

21 And sometimes, myself or my co-counsel may
22 cross-examine witnesses and ask them questions just to
23 show you that it has nothing to do with my client.

24 When you hear evidence in this case, when
25 you hear witnesses testify, please ask yourselves: Who

1 does this evidence apply to? And, is this evidence
2 connected to Omar Castillo?

3 The judge suggested that you may want to
4 take notes during this trial. And I urge you to take
5 that suggestion and to take notes and write down what
6 you hear and how it relates specifically to my client,
7 Mr. Castillo.

8 Now, Ms. Martinez mentioned a lot of
9 horrible things about MS-13, scary things. And, I'm not
10 going to sit here and tell you that MS-13 is not a scary
11 gang. I'm not going to do that. Because I think that
12 most people that hear about a gang are going to think
13 that they're related to bad things.

14 I'm also not going to deny that my client,
15 Mr. Castillo, was associated with members of MS-13. But
16 I am going to deny that he's guilty of the accusations
17 against him.

18 And, just like sometimes in the media, you
19 know, they want to show you the scariest, the most
20 shocking scene to grab your attention -- and that's what
21 the government is going to do in this case. They're
22 going to show you the scariest things and tell you about
23 the scariest things that MS-13 does all around the
24 world.

25 And you're going to hear that none of that

1 evidence has anything to do with Mr. Castillo.

2 You heard some of my other fellow colleagues
3 talk about one of the individuals that they're going to
4 bring. Ms. Austin mentioned him a moment ago. They're
5 going to refer to him as Buso.

6 And he's going to come in here, and ladies
7 and gentlemen, the evidence is going to show that he
8 doesn't know who my client, Mr. Castillo, is. In fact,
9 I'll tell you he doesn't know who any of these
10 individuals are, and he never heard of them until he was
11 asked to testify in this case.

12 But, he has now become a professional
13 witness for the government, testifying, and you'll hear,
14 in many cases about MS-13.

15 And why? Because he's a scary guy. He's
16 got a tattoo on his face. And he's going to talk to you
17 very casually about killing people, and people that he's
18 killed. And the government thinks that that's going to
19 shock you, and that that's going to leave an impression.

20 But just like Ms. Austin told you, look at
21 the evidence in this case and ask yourselves: What does
22 this have to do with Omar Castillo?

23 Now, they are going to bring witnesses to
24 talk about Mr. Castillo and to talk about some of the
25 allegations that they raised to you a moment ago.

1 These people -- and you've heard some of my
2 colleagues talk about them -- known liars, known
3 murderers and known criminals. That's what you have to
4 know about them.

5 I want you to think about the government's
6 case almost like you're building a house, because that's
7 what they're going to try to do during this trial. And,
8 think about it like they're building the house brick by
9 brick. It's their burden to prove this case beyond a
10 reasonable doubt.

11 So, think about how sturdy that house has to
12 be, and think about each of their witnesses. That's who
13 they're going to use as bricks to build this case, to
14 try to prove this case beyond a reasonable doubt.

15 But who's their case built on? Well, you've
16 heard a little bit about them. Jose Del Cid, known as
17 Duende, a known liar, a known murderer and a known
18 criminal.

19 He lied to police. That's going to be
20 proven to you here in this courtroom. He's killed many
21 people. He'll probably tell you that very matter of
22 fact himself. He's a devil worshipper. He said that,
23 too.

24 But yet the government is going to bring him
25 here and they're going to tell you that his testimony,

1 along with other liars and murderers, that that's the
2 foundation that their house is built on, and that that's
3 enough to sustain their evidence beyond a reasonable
4 doubt.

5 Each of the government's witnesses is going
6 to be the same. Skinny, a leader who planned and
7 ordered killings, was a drug dealer.

8 One by one, ladies and gentlemen, you're
9 going to hear these witnesses, and you're going to hear
10 their testimony. And it's your job, it's your job and
11 your job alone, to weigh their credibility.

12 Look at their biases. Why are they doing
13 this? Why are they coming here to testify?

14 One of the other witnesses that has been
15 mentioned is Junior, someone that the government is
16 going to bring in, like my colleagues have said, a paid
17 confidential human source, as the government will refer
18 to him. He's being paid -- he's been paid by the
19 government to come here and testify. But, even more
20 than that, and of greater benefit, and like Mr. Amolsch
21 said a moment ago, is that he gets a visa for being
22 here.

23 And, Ms. Martinez didn't tell you that when
24 she talked about Junior and how great he is, he's
25 getting all these recordings.

1 Well, like Mr. Amolsch told you, and
2 Mr. Leiva mentioned, there's this sense that he's
3 talking himself up. He's a guy from another clique,
4 and, he's trying to get the guys to brag. And some of
5 them do.

6 But, you're never going to hear my client
7 say that he killed somebody.

8 And, when you think about it, and after you
9 hear these witnesses and what they're getting out of
10 this, you're going to -- I want you to think back on
11 that house that we're talking about, and think about
12 what it's built on, what evidence there is, and what
13 there isn't.

14 There's no physical evidence tying my client
15 to either of these charges. You're never going to hear
16 him say that -- or you're not going to hear him planning
17 the murders.

18 And the government will bring -- as it
19 relates to one of the murders, they're going to bring
20 individuals that were involved in the planning, and
21 they'll tell you that my client wasn't there for the
22 planning.

23 I'm going to speak specifically about the
24 two counts that my client is charged in, and that is
25 Count 4, the murder of Nelson Quintanilla Trujillo, who

1 they will refer to as Lagrima.

2 The government's evidence, again, is going
3 to be that there were several people involved in the
4 planning of that murder. They're going to bring some of
5 them here. And they're going to tell you them (sic),
6 along with other unnamed individuals -- but not my
7 client -- were involved in planning the murder of
8 Lagrima, and carrying it out. And the people that are
9 going to come and testify are going to admit to that.

10 But, I want you to pay attention to, also,
11 how their testimony -- how the details of their
12 testimony are going to conflict with one another.

13 There's going to be no evidence that my
14 client lured him there, or lured anybody there. There's
15 going to be conflicting evidence that my client was even
16 there.

17 The government said he played a prominent
18 role. But, you're going to learn that some of the
19 individuals who said that they were there, who said that
20 they were involved in the murder, don't even mention him
21 as being there.

22 Remember, when Ms. Martinez talked about
23 reburying Lagrima's body, my client is not there for
24 that, either, although most of the people who were there
25 for the murder of Lagrima seemed to be there also for

1 the reburial, according to their evidence.

2 As it relates to Count 6, which my client is
3 also charged in -- and that's the murder of Gerson Adoni
4 Martinez, also referred to as Lil Guason -- the
5 government told you about him.

6 But -- and Mr. Amolsch just talked in great
7 detail about that murder. You're not going to hear my
8 client on any phone calls admitting to the murder or
9 admitting to doing anything in relation to Lil Guason.

10 And, I agree with Mr. Amolsch that the
11 evidence is going to be that if anybody knew anything,
12 it was that Lil Guason, they wanted to -- Skinny wanted
13 to beat him up.

14 And you're going to hear a phone call where
15 Skinny calls my client, and that's all he says. He
16 doesn't use the word "green light" or any of the other
17 terms that you're going to hear the government tell you
18 about that mean killing somebody. He just says that he
19 wants him to get beat up.

20 And, my client doesn't even agree to this.
21 He kind of just brushes him off about it. But, there's
22 definitely no planning about killing Lil Guason.

23 Your Honor -- ladies and gentlemen, counsel,
24 I've told you just simply what we believe the evidence
25 will be in this case. But the burden of proof is on the

1 government to prove this case beyond a reasonable doubt.
2 We don't have the burden of proving anything.

3 And if, at the end of the day, if, after
4 we're done with all of the testimony and all of the
5 witnesses, if you feel that there are things missing,
6 this is where you need to look at the government's case,
7 because if there's anything missing, it's not our
8 responsibility to show or prove it.

9 And at the end of this trial, I will stand
10 before you again, and we'll talk about all the ways in
11 which the government did not meet their burden of proof.
12 And at that time, I'm going to ask you to do what
13 justice requires, and that's to find my client not
14 guilty, because the government has not proved their case
15 beyond a reasonable doubt.

16 Thank you.

17 THE COURT: Counsel for Douglas Duran
18 Cerritos.

19 OPENING STATEMENT BY DEFENDANT DURAN CERRITOS

20 MR. CRAWLEY: May it please the Court, Your
21 Honor, government.

22 Good afternoon, ladies and gentlemen. My
23 name is Dwight Crawley, and I, along with Joseph Conte,
24 represent Douglas Duran Cerritos. I'm going to be very
25 brief.

1 Mr. Cerritos is charged in Count 6. He pled
2 guilty -- he pled not guilty to Count 6 because, in
3 fact, he is not guilty of Count 6.

4 The government has told you a lot about what
5 its evidence will be in this case. I welcome that
6 evidence. I welcome each and every one of those
7 witnesses that they claim will take that witness stand
8 to come forward and testify in this case.

9 And when they take that witness stand and
10 when they testify, you will watch each and every one of
11 those witnesses contradict himself as he attempts to
12 secure his own beneficial reward from the government.

13 It's not going to take a long time to prove
14 that those witnesses are natural-born killers, but more
15 importantly, natural-born liars. It will be very simple
16 to you, ladies and gentlemen. It won't take a long
17 time.

18 At the end of this case, my co-counsel,
19 Joseph Conte, and I are going to ask you to do the only
20 just things as it relates to Mr. Cerritos, and that's
21 find him not guilty.

22 THE COURT: Thank you.

23 Counsel for Mr. Manuel Ernesto Paiz Guevara.

24 MR. CHICK: Good afternoon, ladies and
25 gentlemen. My name is Mike Chick and I'm the attorney

1 for Mr. Manuel Ernesto Paiz Guevara. He is seated in
2 the very back corner. He's got like a black sweater
3 on.

4 Manny, can you stand up, just really
5 briefly?

6 (Defendant Paiz Guevara complies.)

7 MR. CHICK: That's my client. Some of you
8 may have a problem seeing him. But I represent him.

9 Let me at the outset say, you may notice
10 during the course -- during the course of this trial
11 that my client is the only person here who has just one
12 lawyer.

13 And I just want to ask for your commitment
14 to not hold that against him in any way, not to assume
15 that that means that, you know, somehow, you know,
16 things aren't as serious for him as they are for
17 everybody else. The stakes are serious, despite the
18 number of lawyers that he has compared to everybody
19 else.

20 You may hear him referred to by a bunch of
21 different names. I call him Manny most of the time.
22 His name is Manuel Ernesto Paiz Guevara. You may hear
23 him referred to as Mr. Paiz Guevara. You may hear him
24 referred to as Mr. Guevara. And you might hear him
25 refer to by a nickname, which is Solitario.

1 And, I don't know that you're going to hear
2 who -- who gave him that nickname, but I would submit
3 that the nickname is actually a pretty -- a pretty
4 accurate reflection of who he is, of his personality.
5 The name Solitario essentially means somebody who sort
6 of keeps to themselves. And that, I think, describes
7 him in a pretty accurate way, very shy, kind of
8 keep-to-himself kind of a person.

9 As far as this case goes, he is charged with
10 one count. He is charged with Count 6. That is not the
11 murder of Lagrima. I guess I can call the murder of
12 Lagrima murder number one.

13 And then this one we can call murder number
14 two, Count 6. That is the murder of Gerson or Gerson --
15 it's G-e-r-s-o-n -- Aguilar Martinez. Sometimes he's
16 called Lil Guason, G-u-a-s-o-n. So he's charged with
17 murdering Lil Guason and participating in that murder.

18 But before I get into talking about that,
19 let me just talk really briefly about MS-13, because
20 that's really what this whole case is about. That's
21 what brings us here into Federal Court.

22 And, the government obviously talked about
23 this. I think some of the other previous attorneys
24 maybe sort of glossed over it a little bit, but, I know
25 you know it. MS-13 is -- it's really, really bad. It's

1 a really, really bad gang.

2 And, they -- I don't know that the
3 government talked a lot about this, but one of the
4 things that they do is they -- they prey -- they prey on
5 poor, vulnerable, at-risk young men. They prey on
6 people like my client, and they lure them, and they
7 groom them and they try to, you know -- maybe you're
8 lured in initially by: Oh, hey, you know, maybe I'm
9 going to smoke some marijuana with this guy or with
10 these guys, and you're introduced to different people,
11 and it kind of goes from there.

12 And then for you and for me, it's
13 probably -- it's hard to see or to accept how somebody
14 could -- could fall into, "Okay, I'm just going to smoke
15 marijuana" -- which is fairly normal teenage behavior --
16 to, "Okay, maybe I'll sell some marijuana," to, all of a
17 sudden, like you're getting lured in further and
18 further, and they try to kind of bring you to what I
19 would call sort of a point of no return, where you're
20 sort of forced to be -- to be all in.

21 I think that you'll hear evidence that that
22 is the culture of this gang, and that's one of the ways
23 that they operate.

24 Obviously, yes, you're going to hear that
25 they're really violent, that they get what they want by

1 violence, by threats, by intimidation, by striking fear
2 into people.

3 But, this is really important: My client, I
4 believe he is the only person in this courtroom who is
5 not a member of MS-13. He is -- he is not a member. He
6 has never been a member.

7 He has never been initiated into this gang.
8 He has never been -- gone through this ritual that
9 Ms. Martinez described as being jumped in. And I
10 think -- I think he's the only one that hasn't -- hasn't
11 gone through that process. But by the government's
12 evidence, I think that's what you're going to learn.

13 He is somebody that the government will call
14 a *chequeo*. He's somebody who is going through that
15 recruitment process, that, what I call the grooming
16 process, for a lack of a better word. And I think he's
17 the only one who has that role, by the government's
18 allegations.

19 And I think that that makes him pretty --
20 pretty different compared to some of the other people
21 that you're being asked to look at here.

22 Sort of taking that and moving into talking
23 a little bit about Count 6, I'm not going to go into
24 tons of details. You've heard everybody talking.
25 You're going to hear a lot of evidence. But Count 6 is

1 the alleged murder of Gerson Aguilar Martinez, Lil
2 Guason.

3 And, I believe that the evidence -- well, to
4 be honest with you, I don't know what all the evidence
5 is going to be. I don't know what all these witnesses
6 are going to say when they come in. I've not had an
7 opportunity to interview them. I don't get to talk to
8 them like the government does. But I think I have a
9 good idea about what -- what some of the evidence is
10 going to be.

11 And more importantly, I certainly -- I know
12 what the truth is, and I am very hopeful that the truth
13 is going to come out from this evidence.

14 One of the things that I believe you're
15 going to find out is that Manny, Solitario, Mr. Guevara,
16 I think by the government's evidence, you're going to
17 find out -- and I don't think they actually said this to
18 you, but I think that their witnesses are going to say
19 this. I think they're going to say that there was a
20 plan to murder Mr. Martinez. I think their witnesses
21 are going to say that.

22 Now, whether that plan was for purposes of
23 the gang or for personal revenge because he's sleeping
24 with his girlfriend or, you know, whatever it is,
25 that's -- that's -- that's an issue for you guys to

1 consider, and some of the attorneys were talking about
2 that. But I think there was a plan.

3 And I think, even though they didn't tell
4 you this, I believe that their witnesses are going to
5 say that my client was the only person at that murder
6 scene who did not know that there was a plan to murder
7 Gerson, who was my client's best friend. He was his
8 best friend.

9 I think the evidence is going to be that my
10 client was duped, along with Gerson, into going into
11 this situation under the guise that it was going to be
12 something else, under the guise that it was going to be
13 some kind of discipline, that he was duped into going,
14 that he didn't know his best friend was going to be
15 murdered, that he didn't know there was a plan to murder
16 his best friend.

17 I believe that that's what their witnesses
18 are going to say. And I think that that's really,
19 really important, because he's the only person who, by
20 the government's evidence, went in to this meeting, what
21 was supposed to be a meeting, not knowing that his best
22 friend was going to be murdered. He wasn't in on the
23 plan.

24 And that's incredibly important for you to
25 know during the course of this case. And, quite

1 frankly, that and some of the other evidence that I
2 think you're going to hear really, really suggests that
3 he shouldn't be here in this courtroom. He shouldn't be
4 here with these other guys.

5 Is there maybe something else they can try
6 to charge him with, about marijuana or about, you know,
7 maybe try to charge him with accessory after the fact,
8 since he didn't -- you know, after all this stuff
9 happened he didn't go to the police and do all this kind
10 of stuff. Maybe there is. But, he shouldn't be here
11 for this. And I think that the evidence is going to
12 support that.

13 The government talked about -- a little bit
14 about one of their witnesses, who I'll just mention, a
15 guy, his name is Lil Slow. I think it's actually Lil
16 Slow, that's how the kids say it, L-i-l.

17 And so, he was a part of murder number one,
18 the murder of Lagrima, and he was a part of murder
19 number two, the murder that my client is charged with.

20 Now, I think the government said that Lil
21 Slow is going to be -- when he was part of murder one,
22 that he -- he initially didn't know there was a plan.
23 He was a *chequeo* at the time, like my client was a
24 *chequeo*; that he didn't know that there was a plan
25 initially. He wasn't part of the planning process to

1 murder Lagrima, just like my client wasn't part of the
2 murder plan to murder his best friend.

3 But, I think what I heard the government say
4 and what I think their witnesses are going to say is
5 that by the time the murder actually was going to
6 happen, not just when the murder sprung, but by the time
7 the murder, you know, they were there and they were
8 walking to where the scene was and all that, he was told
9 about what his expected role was going to be -- this is
10 Lil Slow in the first murder -- that he was told what
11 his expected role was going to be, and that he was going
12 to do this.

13 And then right afterwards, you know, he was
14 a *chequeo*, he was a recruit, there was this big
15 celebration and he was apparently jumped in, like right
16 after that whole thing happened.

17 If you can -- and, I don't believe that that
18 individual -- the facts are fairly similar, as far as
19 he's concerned, to the situation that my client was in.
20 I don't think that individual was ever charged with that
21 murder, the Lagrima murder, that he didn't participate
22 in the planning of.

23 But, if you compare those two situations,
24 the circumstances my client was in are far, far less
25 aggravating than the circumstances he was in.

1 Number one, my client not only didn't know
2 about the planning, he was purposely kept in the dark
3 all the way up until the time. He didn't know that
4 these guys are going to spring out and start stabbing
5 his best friend.

6 And, I think that when that first murder
7 happened, I think that the evidence is going to be that
8 Lil Slow actually did know by that time that that was
9 going to happen, and what his expected role was.

10 My client was never told -- that's not the
11 situation for him. He was literally thrown into this
12 situation of complete fear, shock, and surprise. And he
13 knows what these people do and he knows what these
14 people are capable of, and he's put there in that
15 situation.

16 I don't think he killed anybody. I do not
17 think he killed anybody, and I think that the evidence
18 is going to show that.

19 And I'm talking about my client being preyed
20 on by this gang. I don't want to give you the
21 impression that I'm saying he is this complete,
22 complete, innocent angel, okay?

23 Is he guilty of hanging around people that
24 he probably -- that none of us would want our kids to
25 hang around? Yeah, he is. But he's not guilty of

1 murder.

2 Is he guilty of smoking weed or selling weed
3 with one or more of these guys on occasion? Yes. Yes,
4 he is. But he's not guilty of murder. And that doesn't
5 make him guilty of murder.

6 I think that's also really important for you
7 to know and to think about. And I think you're probably
8 going to hear that kind of stuff about all the
9 defendants.

10 Also, when -- when we're talking about the
11 evidence, I think it's been pointed out to you during
12 this whole process who all these people are here at the
13 table.

14 We have -- right here, the guy that I'm
15 pointing to in the middle with the shaved head, on --
16 sitting at the government counsel table, he is Detective
17 Betts from the Fairfax County Police Department. He's
18 one of the lead -- he's basically in charge of the -- he
19 does the gang stuff for Fairfax County Police.

20 And this other guy, Fernando Uribe, he is
21 the lead -- as far as I know, he is the lead federal
22 investigator on this case. He is the investigator from
23 the FBI who is in charge of this case, of investigating
24 this case, of working up this case.

25 If I was on the jury, I would definitely

1 want to be hearing from both of these people.

2 So, I would expect that the government is
3 going to call Agent Uribe as the lead investigator on
4 the case. And if they decide not to, I would certainly
5 ask myself, why. So we'll see -- we'll see how that
6 goes.

7 So, there's a lot more that I can talk
8 about, but I'm not going to. The bottom line is this:
9 That's the -- that's the murder that my client is
10 charged with. I don't believe that the evidence is
11 going to show that he's guilty of murder. He did not
12 murder his best friend. He did not murder Gerson. He
13 shouldn't be here in this courtroom. And I think that
14 the evidence is going to show that.

15 And at the end of the day -- they talked
16 about a lot of stuff, but it seemed like they sort of --
17 they didn't talk about all those things that I just told
18 you, which are really, really important. So you can
19 decide for yourself at the end of the case whether what
20 I'm saying is true, or whether what they're saying about
21 my client being part of all this and being part of this
22 plan and all this kind of stuff, whether that's true.
23 And so I ask you to pay close attention.

24 I thank you for your time and for your
25 consideration. Thanks.

1 THE COURT: Counsel for Jesus Alejandro
2 Chavez, please.

3 MS. AMATO: Thank you, Your Honor.

4 OPENING STATEMENT BY DEFENDANT CHAVEZ

5 MS. AMATO: Good afternoon, ladies and
6 gentlemen. My name is Elita Amato, and I, along with
7 my co-counsel, Jerome Aquino, represent Mr. Jesus
8 Chavez.

9 If you can both stand, please.

10 (Defendant Chavez complies.)

11 MS. AMATO: Thank you.

12 June 19th of 2011, around 11:00 p.m. that
13 night, Julio Urrutia was hanging out with his
14 brother-in-law, Luis Rodriguez, when Julio decided he
15 wanted to buy some marijuana.

16 Now, he had smoked some marijuana earlier
17 that night, but he was ready for more. And he knew who
18 to contact. He had a regular supplier whose name was
19 David Jimenez. And so he contacted his regular
20 supplier, and that's who he and his brother-in-law, Luis
21 Rodriguez, went to see that night.

22 Now the Jimenez brothers, they were -- David
23 Jimenez lived with his younger brother, Jose Molina, and
24 they also lived with their mother and other siblings.
25 They lived in the same apartment complex which you will

1 hear a lot about during a part of this trial.

2 The apartment complex was called the
3 Presidential Greens, and it was a group of different
4 buildings, all low-rise, that had different entrances,
5 and some of the buildings were connected and some
6 weren't. The Jimenez brothers lived in that complex, as
7 did Julio Urrutia.

8 Now, Julio Urrutia and his brother-in-law,
9 Luis Rodriguez, when they first went to seek out the
10 Jimenez brothers, the brothers were busy and they
11 weren't ready for them. But when they came back, they
12 observed Jose Molina and David Jimenez outside, in the
13 area, not far from their apartment. And they approached
14 them, they spoke with them, and an argument ensued
15 between Julio Urrutia and David Jimenez.

16 A drug debt was owed. Julio Urrutia owed
17 money to David Jimenez. David Jimenez told Julio
18 Urrutia he wasn't going to sell him any more drugs until
19 the drug debt was paid.

20 Now another individual that was out there
21 that you will hear from, his name is Cosmo Gonzalez.
22 And Cosmo Gonzalez also lived in this apartment complex,
23 in one of the apartments.

24 And, he was out in his front -- basically
25 the front steps of the building, and he was smoking a

1 cigarette. And he was on the phone, but he was also
2 listening to what was going on and he was observing.
3 And he -- he recognized David Jimenez and Jose Molina
4 because they lived in the same apartment complex, and he
5 knew that David Jimenez sold drugs out of his apartment
6 complex. And he will come and he will tell you what he
7 heard and what he saw.

8 Now, while this argument was going on with
9 David Jimenez and Julio Urrutia, two other people came
10 upon the scene. One of them, you've already heard the
11 name, Jose Del Cid, also goes by the name of Duende, and
12 another guy by the name of Sen Garcia, also goes by the
13 name of Gatuso.

14 And those guys were in the mood to fight
15 that night. They had been looking for trouble that
16 whole night, out and about looking for trouble.

17 First, they accompanied Christopher
18 Fernandez. He was supposed to fight a guy named Herlin
19 (phonetics). And Herlin never showed up.

20 Then, they came upon another group of young
21 guys, and these young guys looked like they wanted to
22 fight them. And they were gearing up to fight them, but
23 police came through.

24 Then they saw Jose Molina. And Jose Molina
25 was out there with a buddy of his, and they decided to

1 run after Jose Molina and his friend. But the friend
2 got away, and then Jose Molina ran to his apartment.

3 And that's when Duende -- Del Cid -- and
4 Gatuso -- Sen Garcia -- came upon Julio Urrutia, and
5 they took their aggressions towards him. An argument
6 ensued between them.

7 Julio Urrutia -- excuse me. Duende threw a
8 punch at Julio Urrutia. Julio Urrutia started to fight
9 back, when a shot was heard, and Julio Urrutia fell to
10 the ground. He had been hit.

11 At this time, Cosmo Gonzalez was no longer
12 out on that front step.

13 And actually, Ms. Bishop, can you just show
14 a photo?

15 But Mr. Cosmo Gonzalez -- and you can see
16 from -- he was -- he lived in this area of the apartment
17 complex. And from that apartment complex, he was able
18 to look out the window, and he saw David Jimenez. He
19 will also tell you that later, he observed David Jimenez
20 take something out of his pocket and hide it.

21 Police were called to the scene. Police
22 came to Presidential Greens. And they spoke with
23 people, and they were informed and they learned that the
24 shooter had tattoos on his arms.

25 I would now like to play a recording that

1 the police gave of the shooter's description.

2 MS. MARTINEZ: Objection, Your Honor.

3 MS. AMATO: Your Honor, I'll move on.

4 THE COURT: All right.

5 MS. AMATO: But I would ask that Mr. Chavez
6 take his jacket off. He should have a short-sleeve
7 shirt on. And I'd like him to stand.

8 (Defendant Chavez complies.)

9 MS. AMATO: The evidence in this case will
10 show that Mr. Chavez does not have tattoos on his arms.
11 He does not have tattoos on his hands.

12 Thank you, Mr. Chavez.

13 Del Cid and Sen Garcia will both come and
14 they will take the witness stand over there, and they
15 will testify in front of all of you. And they will tell
16 you that Jesus Chavez was out there with them, and Jesus
17 Chavez was the shooter.

18 You will learn that these two witnesses,
19 these two guys, Del Cid and Sen Garcia, are not
20 believable. They are not to be trusted. They have
21 reasons to lie. They have reasons to put the blame on
22 Jesus Chavez. They are not to be trusted.

23 These guys were gang members, violent gang
24 members, who had to point the finger at someone else,
25 someone who was not a full-fledged gang member, someone

1 who no one would care about.

2 They were able to speak -- they were able to
3 communicate with each other after the shooting. They
4 were able to concoct a story that they could tell other
5 gang members, they could tell the police, and now they
6 could tell you. They agreed to put the blame on Jesus
7 Chavez, to plead guilty and to cooperate with the
8 prosecution. They are not to be trusted.

9 They have entered into plea agreements with
10 the prosecution in which they have agreed to assist the
11 prosecution and testify against Mr. Jesus Chavez, all in
12 hopes that by doing that, the prosecution will return
13 the favor and go before their sentencing judge and
14 convince their sentencing judge to give them a less
15 severe sentence.

16 Be alert for these words from these
17 witnesses: "I'm here just to tell the truth."

18 No, ladies and gentlemen. The evidence will
19 show that they're here to try to get out of jail as soon
20 as they can.

21 Now, you will also hear from other
22 witnesses -- the government will also put on witnesses
23 who either lived in Presidential Greens or who were
24 there, more or less, that night. Some of these people
25 may be Christopher Fernandez. You may hear from Sixto

1 Solano, maybe from Christian Flores, maybe Jefferson
2 Amaya.

3 But the evidence will show -- and these
4 people will also maybe say that Jesus Chavez was with
5 them at some point that night. But the evidence will
6 show, ladies and gentlemen, that none of these
7 individuals were there outside at the location at the
8 time of the shooting. None of these individuals can
9 tell you at the time of the shooting who had the gun and
10 who shot the bullet that hit Urrutia.

11 You will also hear from at least one or two
12 of the Jimenez brothers. And they, too, will point the
13 fingers away from themselves. They, too, have a stake
14 in the outcome.

15 Now, today, earlier, Judge Lee read to you
16 some jury instructions. And at the end of the trial,
17 Judge Lee will also read to you again these and other
18 jury instructions. And these instructions are for all
19 of you to consider and to use to guide you in terms of
20 how you consider the evidence and come back with your
21 verdicts.

22 And one of the instructions that Judge Lee
23 read -- and I believe also one of my colleagues read it
24 to you as well, but I would like to repeat it, because
25 it is pertinent --

1 THE CLERK: Five minutes.

2 MS. AMATO: Thank you.

3 -- as to Mr. Chavez, and that is that merely
4 associating with others, and merely being present at the
5 place where a crime takes place or is discussed, does
6 not, of itself, make someone a member of a conspiracy or
7 a conspirator.

8 Now, that comes into play as to Mr. Chavez.
9 If, for whatever reason, you believe that Mr. Chavez was
10 at Presidential Greens that night, his mere presence
11 alone is insufficient to find him guilty.

12 Mr. Chavez had reasons for being at
13 Presidential Greens. You see, his sister also lived
14 there. She had an apartment there, and he used to go
15 visit with her. Mr. Chavez had recently finished a jail
16 sentence. He had recently been released from jail, and
17 he used to go spend time with his sister.

18 Now there's a lot of evidence in this case
19 you all will hear that has nothing to do with
20 Mr. Chavez. I know you have already heard that from
21 other counsel. But again, as to Mr. Chavez, there is a
22 lot of evidence that you will hear that has nothing to
23 do with him. He was incarcerated from January 1st of
24 2009 until June 11th of 2014.

25 As Mr. Chavez sits before all of you, ladies

1 and gentlemen, he is innocent. As he sat before all of
2 you when you all came in here and you were questioned
3 during the jury voir dire process, he was innocent.

4 As each witness in this trial comes before
5 all of you, Mr. Chavez remains innocent. And, while you
6 go back and deliberate after all the evidence is heard
7 in this case, he remains innocent unless and until all
8 of you find him guilty.

9 And we submit to you, ladies and gentlemen,
10 that after you hear all the evidence, you will find that
11 the government cannot meet their burden of proving
12 Mr. Chavez guilty beyond a reasonable doubt.

13 And the burden, ladies and gentlemen, in
14 this case, stays on this table (indicating). It stays
15 with the prosecution. The burden never shifts to this
16 table (indicating), to this side of the room. It always
17 stays on this side.

18 And what that means is Mr. Chavez does not
19 have to present any witnesses. He does not have to take
20 the stand. He does not have to introduce a single piece
21 of document or photograph into evidence, and you cannot
22 hold that against him. Again, the burden always stays
23 on this table.

24 And even if Mr. Chavez does present
25 witnesses, take the stand or present a photograph or

1 some other document, again the burden never shifts. It
2 stays always on this table.

3 At the end of the trial, ladies and
4 gentlemen, my counsel and I -- Mr. Aquino -- will have
5 another chance to come and speak before all of you. And
6 at that time, we will ask that you find the government
7 has not been able to meet their burden of proving beyond
8 a reasonable doubt that Mr. Chavez is guilty as to all
9 counts, and we will ask that you find Mr. Chavez not
10 guilty of the murder in aid of racketeering, which is
11 Count 7, the use of a firearm during a crime of violence
12 causing death, which is Count 8, and felon in possession
13 of a firearm, Count 9.

14 Thank you.

15 THE COURT: All right. Ladies and
16 gentlemen, we'll take the afternoon recess now for
17 15 minutes.

18 Remember, do not discuss the case. Don't
19 permit the case to be discussed in your presence.

20 We will return in 15 minutes.

21 Thank you.

22 (Thereupon, court recessed from 3:34 p.m.
23 to 3:57 p.m.)

24 (Jury not present.)

25 THE COURT: Counsel, two things. I'm going

1 the bring out juror, Mr. C [REDACTED], and I believe he is
2 Juror Number 4. He thinks he might recognize somebody.

3 Bring him out.

4 I'll have him take the stand.

5 (Juror present.)

6 THE COURT: You may be seated.

7 THE JUROR: Yes, sir.

8 THE COURT: Tell me your name again.

9 THE JUROR: R [REDACTED] C [REDACTED].

10 THE COURT: Mr. C [REDACTED], you sent me a
11 note, so I wanted to know what the note was and I want
12 everybody to hear what the note was. Go ahead.

13 THE JUROR: Yes. There was -- basically, I
14 was saying that I potentially may have seen some of the
15 defendants. So I didn't know if that was an issue or
16 not an issue --

17 THE COURT: All right.

18 THE JUROR: -- in the past.

19 THE COURT: Stand up and take a look, see if
20 you recognize somebody. Tell me who you think you
21 recognize.

22 THE JUROR: I think I recognized this
23 gentleman here, this one, and the gentleman in the white
24 shirt.

25 MR. CRAWLEY: Stand?

1 THE COURT: Yes, would you stand?

2 THE JUROR: Yes.

3 THE COURT: This is Mr. --

4 MR. CRAWLEY: Cerritos.

5 THE COURT: -- Cerritos and Mr. --

6 MR. ZIMMERMAN: Gaitan Benitez.

7 THE COURT: Okay. Have a seat.

8 Tell me how you saw them, or where you think
9 you've seen them.

10 THE JUROR: I think I've see then maybe a
11 year or so ago, potentially in the gym.

12 THE COURT: You can have a seat.

13 What gym did you see them in?

14 THE JUROR: Potentially in LA Fitness and
15 Landmark.

16 THE COURT: Did you see -- who did you see?
17 One or both?

18 THE JUROR: I think I seen both of them.
19 I'm not a hundred percent sure. I think I've seen them.
20 I'm not sure at all. I just wanted to make sure it was
21 known.

22 THE COURT: Okay. Let me ask you to step
23 out and I'll make further inquiry. Thank you.

24 (Juror not present.)

25 MR. CRAWLEY: No issue.

1 THE COURT: Mr. Crawley?

2 MR. CRAWLEY: No issue. You know where
3 they've been.

4 THE COURT: I hadn't thought of that.

5 MS. AUSTIN: I don't think it's an issue, as
6 long as the extent of his comments are, "I think I've
7 seen them."

8 Did he see them and he thinks they were
9 doing something they shouldn't have been doing, or was
10 it just, he thinks he may have seen them in passing at
11 the gym, and that's the end of it?

12 MR. ZIMMERMAN: Right.

13 MS. AUSTIN: Well, if he thinks he saw
14 them --

15 MR. ZIMMERMAN: If he thinks -- we know --
16 if he thinks that he saw them, and he now -- we don't
17 know if he has a positive or negative impression, if he
18 thinks he saw them, even if he is mistaken -- he
19 couldn't have seen them at Landmark Mall. He believes
20 he does. So I'm concerned about whether or not --
21 what -- I'm concerned that he might have a negative
22 impression. I mean, all we have is, I guess, he saw
23 them at LA Fitness at Landmark Mall.

24 MS. AUSTIN: And if it was last year, the
25 judge -- or Your Honor, the Court, could instruct him

1 that: Trust me when I tell you they weren't in that
2 area at the time you believe you saw them. So...

3 MR. ZIMMERMAN: I know. It's getting sticky
4 now.

5 THE COURT: No, I don't think -- I don't
6 think I'll do that.

7 Ms. Martinez, I'm open to suggestions. Go
8 ahead.

9 MS. MARTINEZ: I just was going to say, the
10 government's preference would be that Your Honor not
11 instruct him that. The point of all these procedures
12 are to not tell the jury that they're all incarcerated.
13 So...

14 THE COURT: No. I think what I'll do is
15 just say that we've had counsel inquire whether these
16 individuals recall seeing him at LA Fitness -- or have
17 ever been to LA Fitness, and their indication is that
18 they have not been there.

19 But let me find out from him what context he
20 saw them, like you asked.

21 MR. CRAWLEY: I have reason to believe that
22 my client, Mr. Cerritos, has never been in a -- in a gym
23 in his entire life.

24 THE COURT: Okay.

25 MR. ZIMMERMAN: But I would like the inquiry

1 as to what he believes he saw.

2 THE COURT: All right. I thought -- were
3 you going to say something about the gym, too, or you're
4 not going to say anything about the gym?

5 MR. ZIMMERMAN: No, I have no representation
6 on that.

7 THE COURT: All right. Thank you. Let's
8 bring him back.

9 (Juror present.)

10 THE COURT: Mr. C [REDACTED], can you tell me
11 about the context in which you think you might have
12 scene either individual?

13 THE JUROR: Yes, sir. I think I seen them
14 in the gym. That's pretty much it. I don't know them
15 or anything like that.

16 THE COURT: Describe what was taking place
17 when you saw them.

18 THE JUROR: They were working out.

19 THE COURT: Working out?

20 THE JUROR: Yes, sir.

21 THE COURT: Okay. Well, what I did was I
22 asked each individual lawyer to determine from their
23 client, and the information I have is neither have been
24 to that gym. And so, if your basis is LA Fitness, you
25 might be mistaken. But --

1 THE JUROR: It's a possibility.

2 THE COURT: Well, you've done the right
3 thing by bringing it to my attention, which I hope you
4 would do. You've done nothing wrong. And what I hope
5 to do in a moment, when you all come back, is to resume
6 the trial. But thank you for bringing that to my
7 attention. Thank you very much.

8 THE JUROR: Yes, sir.

9 THE COURT: You're very kind. Thank you.
10 (Juror not present.)

11 THE COURT: Counsel, with your permission I
12 would like to give the jury a seating chart, the same
13 one that my court staff prepared for me that I have. It
14 has no pictures, no drawings, just names.

15 MS. MARTINEZ: No objection from the
16 government, Your Honor.

17 MS. AUSTIN: We're fine, Your Honor.

18 MR. ZIMMERMAN: I'm getting oriented, Judge.
19 We're fine.

20 THE COURT: Hearing no objection, you can
21 bring our jury out, Mr. Toliver. Thank you.

22 Who is going to pass them out? Thank you.
23 (Jury present.)

24 THE COURT: You may be seated. Thank you.
25 Ladies and gentlemen, I had my staff --

1 normally when I have a trial -- prepare a seating chart
2 for me. And I'm going to give you a copy of it so --
3 now this seating chart is just a seating chart of the
4 way I see the courtroom. It's not evidence of any kind.
5 It is just to assist you in recognizing the names of the
6 individual lawyers and the parties in the courtroom.

7 Put your own name on your seating chart and
8 keep it with your notes.

9 (End of excerpt at 4:05 p.m.)

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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United States District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the jury trial in the case of UNITED STATES OF AMERICA v. JOSE LOPEZ TORRES, et al.

I further certify that I was authorized and did report by stenotype the proceedings in said jury trial, and that the foregoing pages, numbered 1 to 158, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 28th day of November, 2016.

/s/

Renecia Wilson, RMR, CRR
Official Court Reporter